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RECORD, CASE No. 14,762.

796

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 1288.

THE MICHIGAN INSURANCE BANK, PLAINTIFF IN ERROR,

vs.

ANSON ELDRED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED JULY 22, 1891.

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1 UNITED STATES OF AMERICA, } ss:
Eastern District of Wisconsin, }

Circuit Court of the United States of America for the Eastern District of Wisconsin.

At a stated term of the circuit court of the United States for the eastern district of Wisconsin begun and held according to law at the city of Milwaukee, in said district, on the first Monday in January, A. D. 1891—present, the Honorable W. Q. Gresham, circuit judge, presiding; Geo. N. Wiswell, marshal; Edward Kurtz, clerk—among other the following proceedings were had, to wit:

THE MICHIGAN INSURANCE BANK, Plaintiff,
vs.
ANSON ELDRED, ELISHA ELDRED, and URI BALCOM, Defendants. } At Law.

Be it remembered that heretofore, to wit, on the 11th day of May, A. D. 1872, came the above-named plaintiff, by its attorneys, Messrs. Finches, Lynde & Miller, and filed its præcipe for a summons against the above-named defendants, as follows, to wit:

Præcipe for Summons.

U. S. Cir't C't, E. Dis. Wisc'n.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, ELISHA ELDRED, & URI BALCOM.

The clerk will issue summons in above cause, returnable according to law.
Debt & damages, $10,000.
Yours, &c. FINCHES, LYNDE & MILLER.
Pl't'ff's Att'ys.

May 11, 1872.

2 And also filed bond for costs, which is approved.

Whereupon a summons issued, returnable the first Monday in June next, as follows:

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the marshal of the eastern district of Wisconsin, Greeting:

You are hereby commanded to summon Anson Eldred, Elisha Eldred, & Uri Balcom to appear before the circuit court of the United States of America for the eastern district of Wisconsin, in the seventh circuit, at the United States court-room, in the city of Milwaukee, on the first Monday of June ensuing, then and there to

answer unto the Michigan Insurance bank in a plea of debt, to its damage ten thousand dollars, which shall then and there be made to appear; and of this writ make due return.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this eleventh day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

EDWARD KURTZ, *Clerk.*

FINCHES, LYNDE & MILLER, *Attorneys.*

(Endorsed:) 249. Law docket C. The Michigan Insurance Bank *vs.* Anson Eldred, Elisha Eldred, Uri Balcom. Summons. Damages, $10,000. Filed June 3rd, 1872. Edw. Kurtz, clerk.

Summons Returned.

"Served on the within-named Anson Eldred by leaving a copy of this summons, at his usual place of abode, in presence of a member of his family, of suitable age and discretion, whom I informed of the contents thereof, he not being found, this third day of
3 June, A. D. 1872. The within-named Elisha Eldred & Uri Balcom not found.

C. S. HAMILTON, *Marshal,*
By C. H. HAMILTON, *Deputy.*

Fees, $2.66.

May 23, 1874.—This day came the plaintiff, by its attorneys, and filed this complaint, as follows:

Complaint.

U. S. Circuit Court, Eastern District of Wisconsin.

THE MICHIGAN INSURANCE BANK, Plaintiff,
against
ANSON ELDRED, URI BALCOM, & ELISHA ELDRED, Defendants

Said plaintiff, by Finches, Lynde & Miller, its attorneys, complains and alleges that at the time of the commencement of this suit the said plaintiff was a corporation created and organized under the laws of the State of Michigan, and that the said defendant Anson Eldred was at the same time a citizen and resident of the State of Wisconsin; that the said defendants Uri Balcom and Elisha Eldred at the time of the commencement of this suit were not and are not residents of the State of Wisconsin, and were not and never have been served with processes in this suit, and have not, either by themselves or their attorneys, appeared in this suit.

And said plaintiff alleges that heretofore, to wit, on the fourteenth day of August, A. D. 1861, the said plaintiff impleaded the said defendant Anson Eldred with said defendants Uri Balcom and Elisha

Eldred as defendants in a suit commenced by it, said plaintiff, in the circuit court in and for the county of Wayne, in the State of Michigan, and which suit was commenced by process of
4 attachment; that neither the said Anson Eldred, Uri Balcom, or Elisha Eldred were personally served with process in the said suit; but that afterwards, to wit, on or about the 27th day of December, 1861, the said defendant Anson Eldred, by his attorney-, Messrs. Walker & Kent, appeared in the said suit and filed a plea of the general issue, with notice of set-off, to the declaration of plaintiff therein; and that such proceedings were then and there had in the said suit that the said plaintiff on the 13th day of May, A. D. 1862, duly recovered a judgment in form against all of the said named parties, to wit, Anson Eldred, Uri Balcom, and Elisha Eldred, in the sum of four thousand two hundred and eleven dollars and fifty-six cents, damages and costs.

And said plaintiff alleges that the said Uri Balcom and Elisha Eldred were not personally served with process in said suit and did not by themselves or their attorneys appear in said suit.

And said plaintiff alleges that the said circuit court of Wayne county, Michigan, is a court of general jurisdiction and had full and complete jurisdiction of the subject-matter of said suit and of the person of said defendant Anson Eldred.

And said plaintiff alleges that the said judgment has not been paid, and that there is now due and owing on the said judgment the said sum of four thousand two hundred and eleven dollars and fifty-six cents, and the interest on the same from the thirteenth day of May, A. D. 1862, at the rate of seven per centum per annum.

Wherefore said plaintiff demands judgment for said sum of four thousand two hundred and eleven dollars and fifty-six cents, and the interest on the same from the thirteenth day of May, 1862, at the rate of seven per centum per annum, & the costs of this action.

FINCHES, LYNDE & MILLER,
Pl'ff's Att'ys.

5 June 11, 1874.—This day came the defendant Anson Eldred, by his attorneys, Messrs. Cottrill & Cary, and filed his answer as follows:

Answer.

Circuit Court of the United States, Eastern District of Wisconsin.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, Impleaded with URI BALCOM and ELISHA ELDRED.

And now comes the said defendant Anson Eldred, by Cottrill & Cary, his attorneys, and, answering the plaintiff's complaint in the above-entitled action, denies each and every allegation in said complaint contained.

And, for a second and further defence, said defendant alleges that

the cause of action stated in said complaint did not accrue within ten years before the commencement of this action.

COTTRILL & CARY,
Attorneys for Def't Anson Eldred.

June 1, 1875.—This day came the parties, by their counsel, Mr. H. M. Finch appearing for the plaintiff, and Messrs. Cottrill & Cary for the defendant Anson Eldred, and the issue herein between the plaintiff and said defendant came on to be tried.

Whereupon a jury was called to try the same, who came, to wit, George Grimshaw, Henry R. Freeman, Alexander T. Wilson, Thomas J. Freeman, John Roe, Richard Roe, George Lawrence, Harlow Bolton, L. H. Sheppard, Benton Hinkley, Erastus Keach, and John Bonnell, twelve free, honest, and lawful men of the district, who were severally sworn and empanelled, and, the trial not being concluded, the same was adjourned until to-morrow morning.

6 June 2, 1875.—This day came the parties, by their counsel, and the trial of the issue herein between the plaintiff and the defendant Anson Eldred was resumed.

And the jurors of the jury aforesaid, being charged by the court on their said oaths respectively, do say that they find the issue herein in favor of the said defendant.

And came the plaintiff's counsel and moved the court for a new trial for reasons filed, as follows:

U. S. Circuit Court, Eastern Dist. of Wisc'n.

THE MICHIGAN INSURANCE BANK
against
ANSON ELDRED *et als.*

And now comes the said plaintiff, by Finches, Lynde & Miller, its attorneys, and moves the court now here to set aside the verdict in this cause as contrary to law and against the evidence.

FINCHES, LYNDE & MILLER,
Pl'ff's Atty's.

June 24, 1875.—This day came the parties, by their counsel, and the motion of the plaintiff for a new trial came on to be heard and was argued by Mr. H. M. Finch for the plaintiff and by Mr. Cottrill for the defendant Anson Eldred, when the court took time to consider the same.

July 23, 1875.—This day came the parties, by their counsel, and, on consideration of the motion of the plaintiff's counsel for a new trial, it is ordered by the court that a new trial be, and hereby is, granted.

April 12, 1876.—This day came the parties, by their counsel, and by consent it is ordered by the court that this cause be, and hereby is, continued.

7 November 9th, 1885.—This day came the parties, by their counsel, Messrs. Geo. P. Miller and B. K. Miller, Jr., appearing for the plaintiff, and Messrs. A. L. Cary and J. T. Fish for the defendant Anson Eldred, and the issue herein between the plaintiff and said defendant came on to be tried.

Whereupon a jury was called to try the same, who came, to wit, W. R. Blodgett, George W. Ogden, F. H. Magdeburg, John B. Buell, James S. Peck, H. M. Northrop, A. B. McCumber, E. G. Crandall, Frederick Herman, Andrew A. Hathaway, E. E. Ely, and Peter Wright, twelve free, honest, and lawful men of the district, who were severally sworn and empanelled, and, the trial not being concluded, the same was adjourned until to-morrow morning.

November 10, 1885.—This day came the parties, by their counsel, and the trial of the issue herein between the plaintiff and the defendant Anson Eldred was resumed.

And the jurors of the jury aforesaid, being charged by the court on their said oaths respectively, do say that they find the issue herein in favor of said defendant Anson Eldred.

And came the plaintiff's counsel and moved the court for a new trial for reasons filed, as follows:

Motion for New Trial.

U. S. Circuit Court, Eastern District of Wisconsin.

THE MICHIGAN INSURANCE BANK, Plaintiff,
vs.
ANSON ELDRED, Impleaded with URI BALCOM and ELISHA ELDRED, Defendants.

Now comes the plaintiff above named, by Finches, Lynde & Miller, its attorneys, and moves the court now here to set aside the verdict and grant a new trial because the verdict is contrary
8 to law and against the evidence.

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

November 18, 1885.—This day came the parties, by their counsel, and, the motion of the plaintiff for a new trial being submitted, on consideration thereof it is ordered by the court that said motion be, and hereby is, overruled.

Judgment.

Whereupon it is considered and adjudged by this court now here that the plaintiff take nothing by its writ, and that the defendant Anson Eldred do have and recover of the said plaintiff, The Michigan Insurance Bank, sixty-two dollars and sixty cents, his costs about his said defence in this behalf by him expended, and that he have execution therefor.

Judgment-roll filed November 18th, A. D. 1885.

EDWARD KURTZ, *Clerk.*

Costs, $62.60.

January 2, 1886.—This day came the plaintiff, by its attorneys, and filed the bond of Benjamin K. Miller and George P. Miller in the sum of three hundred dollars, conditioned that said plaintiff shall prosecute a writ of error to effect and answer all damages and costs if it fail to make good its plea, which bond was duly approved by the district judge.

Whereupon a writ of error and citation issued, and a copy of said writ of error lodged for the defendant in error.

9 *Assignment of Errors.*

United States Circuit Court, Eastern District of Wisconsin.

THE MICHIGAN INSURANCE BANK, Plaintiff,
vs.
ANSON ELDRED, Defendant.

At the October term of the circuit court of the United States for the eastern district of Wisconsin, in the years 1885 and 1886, to wit, on the second day of January, A. D. 1886, in the said term, before the Hon. Charles E. Dyer, judge of said court, comes the said The Michigan Insurance Bank, by Finches, Lynde & Miller, its attorneys, and says—

That in giving judgment aforesaid there is manifest error in this: that the judgment aforesaid was given in favor of the defendant, Anson Eldred, when by the law of the land the said judgment should have been given for the plaintiff and against said defendant; and the defendant's plea of the statute of limitations should have been overruled, and the court should not have instructed the jury to return a verdict for the said defendant, but should either have submitted the issues of fact in the case to the jury and take its finding thereon or directed a verdict for the plaintiff and against said defendant.

And the said The Michigan Insurance Bank prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it hath lost by the occasion of the said judgment.

FINCHES, LYNDE & MILLER,
Att'ys for the said The Mich. Ins. Bank,
the Plaintiff Aforesaid.

(Endorsed:) U. S. circuit court, east. dist. of Wisconsin. The Michigan Insurance Bank, plaintiff, *vs.* Anson Eldred, defendant. Assignment of errors. Copy. Finches, Lynde & Miller, plaintiff's att'ys.

10 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America for the eastern district of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of the United

States of America for the eastern district of Wisconsin, before you, between The Michigan Insurance Bank, plaintiff, and Anson Eldred, impleaded with Elisha Eldred & Uri Balcom, defendant, a manifest error hath happened, to the great damage of the said The Michigan Insurance Bank, as by the complaint appears, and
11 it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this second day of January, in the year of our Lord one thousand eight hundred and eighty-sic, and of the Independence of the United States the 110th.

[Seal U. S. Circuit Court, Eastern District of Wisconsin.]

EDWARD KURTZ,
Clerk U. S. Circuit Court, East'n Dist. of Wis.

The United States of America to Anson Eldred, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Wisconsin, wherein The Michigan Insurance Bank is plaintiff in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.
12 Witness the Honorable Charles E. Dyer, district judge of the United States for the eastern district of Wisconsin, at the city of Milwaukee, in said district, this second day of January, A. D. 1886, and of the Independence of the United States the 110th.

[SEAL.] CHARLES E. DYER, *Judge.*

Service of this citation is admitted this 18th day of January, A. D. 1886.

ALFRED L. CARY,
Attorney for Defendant, Anson Eldred.

March 22, 1886.—Certified transcript of record, with writ of error annexed, forwarded to the Supreme Court of the United States, Washington, D. C.

July 1, 1889.—This day came the plaintiff's counsel and presented to the court a mandate of the Supreme Court of the United States, as herein filed, as follows, to wit:

Mandate of Supreme Court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the eastern district of Wisconsin, Greeting:

[SEAL.] Whereas lately, in the circuit court of the United States for the eastern district of Wisconsin, before you or some of
13 you, in a cause between The Michigan Insurance Bank, plaintiff, and Anson Eldred, impleaded with Elisha Eldred and Uri Balcom, defendant, wherein the judgment of the said circuit court entered in said cause on the 18th day of November, A. D. 1885, is in the following words, viz:

"This day came the parties, by their counsel, and, the motion of the plaintiff for a new trial being submitted, on consideration thereof it is ordered by the court that said motion be, and hereby is, overruled.

Whereupon it is considered and adjudged by this court, now here, that the plaintiff take nothing by its writ, and that the defendant, Anson Eldred, do have and recover of the said plaintiff, The Michigan Insurance Bank, sixty-two dollars and sixty cents, his costs about his said defense in this behalf by him expended, and that he have execution therefor.

Judgment-roll filed November 18th, A. D. 1885."

As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and eighty-eight, the said cause came on to be heard before the said Supreme Court on the
14 said transcript of record, and was argued by counsel; on consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that the said plaintiff recover against the said defendant, Anson Eldred, one hundred and five dollars for its costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court, with directions to set aside the verdict and to order a new trial.

MAY 13, 1889.

You therefore are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and judgment of this court, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness the Honorable Melville W. Fuller, Chief Justice of said

Supreme Court, the twenty-fourth day of June, in the year of our Lord one thousand eight hundred and eighty-nine.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Whereupon it is ordered and adjudged by this court that the said plaintiff have execution against the defendant, Anson Eldred, for the said sum of one hundred and five dollars, costs of the Supreme Court, and that the verdict of the jury be, and hereby is, set aside and a new trial ordered.

15 October 7, 1889.—This day came the defendant, Anson Eldred, by his counsel, and moved the court upon affidavits filed for leave to amend his answer herein as per proposed amended answer thereto annexed and for leave to file the same; which motion is as follows:

Motion to Amend Answer.

Circuit Court of the United States, Eastern District of Wisconsin.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, Impleaded with URI BALCOM and ELISHA ELDRED.

And now comes the above-named defendant, Anson Eldred, by Alfred L. Cary, his attorney, and moves the said court now here for leave to amend his answer herein by denying the corporate existence of said plaintiff, as stated and set forth in the third defense contained in said defendant's proposed amended answer hereto annexed, and for leave also to file said proposed amended answer as his said amended answer herein, and for such other and further relief, or both, in the premises as shall seem meet and agreeable to equity. Said motion will be based upon the affidavits of Anson Eldred, Alfred Russell, and Alfred L. Cary, hereto annexed and filed herewith, and also upon all the records, papers, and proceedings on file herein. Dated September 28th, 1889.

ALFRED L. CARY,
Att'y for Def't Anson Eldred.

16 November 11, 1889.—This day the motion of the defendant, Anson Eldred, for leave to file an amended answer herein came on to be heard and was argued by Mr. A. L. Cary in favor of the same and by Messrs. E. P. Smith and Geo. P. Miller in behalf of the plaintiff in opposition and submitted, when the court took the same under consideration.

November 12, 1889.—This day came the parties, by their counsel, and, in consideration of the motion of the defendant, Anson Eldred, for leave to file an amended answer herein, it is ordered by the court that said motion be, and hereby is, granted, and that the amended answer annexed to the motion papers filed herein on the 7th day of

October, 1889, stand as such amended answer, and upon application of said defendant it is ordered by the court that this cause be, and hereby is, continued.

Which amended answer is as follows:

Amended Answer.

Circuit Court of the United States, Eastern District of Wisconsin.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, Impleaded with URI BALCOM and ELISHA ELDRED.

And now comes the said defendant, Anson Eldred, by
17 Alfred L. Cary, his attorney, and, answering the plaintiff's complaint in the above-entitled action, denies each and every allegation in said complaint contained.

And for a second and further defense said defendant alleges that the cause of action stated in said complaint did not accrue within ten years before the commencement of this action.

And for a third and further defense said defendant denies, upon information and belief, that at the time of the commencement of this action the said plaintiff was or is now a corporation created or organized under the laws of the State of Michigan or under the laws of any other State, Territory, or government; and said defendant further specifically denies, upon information and belief, that said plaintiff at the time of the commencement of this action was or at any time since then has been or is now a corporation.

ALFRED L. CARY,
Att'y for Def't Anson Eldred.

STATE OF WISCONSIN, *County of Milwaukee,* } *ss:*

Anson Eldred, being duly sworn, deposes and says that he is one of the defendants in this action and makes the foregoing an-
18 swer therein; that he has read said answer and knows the contents thereof, and that he verily believes all of the matters and denials contained in and under that part of said answer designated therein as a third and further defense to be true.

ANSON ELDRED.

Sworn to before me this sixteenth day of Sept., 1889.

C. S. PIERCE,
[SEAL.] *Notary Public, Wis.*

19 And now, at this same term, to wit, January term, 1891, and on the sixty-third day thereof, to wit, on the 24th day of June, A. D. 1891—present, the Hon. W. Q. Gresham, circuit judge, presiding—the following proceedings were had, to wit:

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED. } At Law.

This day came the parties, by their counsel, Messrs. Geo. P. Miller and W. J. Turner appearing for the plaintiff, and Messrs. A. L. Cary and F. C. Winkler for the defendant, and the issue herein came on to be tried; whereupon a jury was called to try the same, who came, to wit, George H. Chase, Charles Andrews, John Holt, Peter Lehman, Frederick T. Goll, J. J. Anderton, W. C. Verplanck, Clarence J. Allen, James K. Ilsley, L. G. Rockwell, D. B. Healy, and Norman L. Burdick, twelve free, honest, and lawful men of the district, who were severally sworn and empannelled, and the jurors of the jury aforesaid, being charged by the court on their said oaths respectively, do say that they find the issue herein in favor of the defendant.

And afterwards, to wit, on the sixty-fourth day of said term,
20 to wit, on the 25th day of June, A. D. 1891, the following proceedings were had, to wit:

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED. } At Law.

This day came the plaintiff's counsel and moved the court for a new trial for reasons filed, as follows:

Motion for New Trial.

U. S. Circuit Court, Eastern District of Wisconsin.

THE MICHIGAN INSURANCE BANK, Plaintiff,
vs.
ANSON ELDRED, Defendant.

Now comes the said plaintiff, by Finches, Lynde & Miller, its attorneys, and moves the court now here to set aside the verdict as contrary to law and against the evidence.

FINCHES, LYNDE & MILLER,
Pl'ff's Att'ys.

And said motion came on to be heard and was submitted. In consideration whereof it is ordered by the court that said motion be, and hereby is, overruled.

Whereupon it is considered and adjudged by this court now here that the plaintiff take nothing by its writ, and that the defendant do have and recover of the said plaintiff, The Michigan Insurance Bank, thirty-three dollars, his costs about his said defense in this behalf by him expended, and that he have execution therefor.

Judgment-roll filed June 25th, A. D. 1891.

EDWARD KURTZ, *Clerk.*

Costs, $33.00.

21 And came the plaintiff, by its counsel, and filed the bond of B. K. Miller, Jr., and Geo. P. Miller in the sum of five hundred dollars, conditioned to prosecute a writ of error to effect and answer all damages and costs if it fail to make its plea good, which bond is approved by the circuit judge. Whereupon a writ of error and citation issued and a copy of said writ of error lodged for the defendant in error.

Which bond is as follows:

22 Know all men by these presents that we, Benjamin K. Miller, Jr., and George P. Miller, are held and firmly bound unto Anson Eldred in the full and just sum of five hundred dollars, to be paid to the said Anson Eldred, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of June, in the year of our Lord one thousand eight hundred and ninety-one.

Whereas lately, at a term of the circuit court of the United States for the eastern district of Wisconsin, in a suit depending in said court between The Michigan Insurance Bank, plaintiff, and Anson Eldred, defendant, a judgment was rendered against the said The Michigan Insurance Bank, and the said The Michigan Insurance Bank having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Anson Eldred, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the twenty-fourth day of July next, 1891:

Now, the condition of the above obligation is such that if the said The Michigan Insurance Bank shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

B. K. MILLER, JR. [SEAL.]
GEO. P. MILLER. [SEAL.]

Sealed and delivered in presence of—
F. A. GEIGER.
JOHN F. HARPER.

Approved by—
W. Q. GRESHAM,
Circuit Judge.

22½ STATE OF WISCONSIN, }
County of Milwaukee, } *ss:*

Benj. K. Miller, Jr., and Geo. P. Miller, being each duly sworn, doth for himself depose and say that he is worth more than one thousand dollars over and above all his debts and exclusive of property exempt from seizure or sale upon execution.

B. K. MILLER, JR.
GEO. P. MILLER.

Subscribed & sworn to before me this June 25, 1891.
[SEAL.] F. A. GEIGER,
Notary Public, Wisconsin.

23 And same day (June 25, 1891) bill of exceptions filed as follows:

Bill of Exceptions.

Circuit Court of United States, Eastern District of Wisconsin.

THE MICHIGAN INSURANCE BANK, Plaintiff,
vs.
ANSON ELDRED, Defendant.

Be it remembered that the above-entitled cause was, on the 24th day of June, 1891, reached in its order upon the calendar and was called, and the parties announced themselves ready to proceed with the trial, the plaintiff appearing by Finches, Lynde & Miller, his attorneys, and W. J. Turner, of counsel, and the defendant, Anson Eldred, appearing by A. L. Cary, his attorney, and F. C. Winkler, his counsel, and a jury of twelve good and lawful men was duly impanelled and sworn, and the trial of said cause proceeded.

The plaintiff, to maintain the issue on its part, offered in evidence a certified copy of the articles of incorporation of "the Michigan Insurance bank," authenticated by the secretary of state of the State of Michigan, whose certificate bears date the 29th day of September, 1890; which articles of incorporation and certificate were received in evidence and are as follows, to wit:

24 (EXHIBIT No. 1.)

STATE OF MICHIGAN, } *ss:*
Office of the Secretary of State, }

I, G. R. Osmun, secretary of state of the State of Michigan, do hereby certify that I have compared the annexed copy of articles of association of the "The Michigan Insurance bank" with the original filed in this office May 30th, 1860, and that it is a true and correct transcript therefrom and of the whole of such original.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State of Michigan, at Lansing, this twenty-ninth day of September, in the year of our Lord one thousand eight hundred and ninety.

[SEAL.] G. R. OSMUN,
Secretary of State.

25 *Certificate of Association.*

This is to certify that the undersigned have this day associated themselves together to establish an office of discount, deposit, and circulation and to become incorporated upon the terms and con-

ditions and subject to the liabilities prescribed in an act of the legislature of the State of Michigan entitled "An act to authorize the business of banking, approved February 16th, 1857," and have assumed for such association the name of the Michigan Insurance bank, and which is to be used in all its dealings. The place where the operations of discount and deposits of said association are to be carried on and where said association is to keep an office for the transaction of its business and the redemption of its circulating notes is to be in the city of Detroit, in the county of Wayne and State of Michigan.

The amount of capital stock of such association is two hundred thousand and ten dollars, which is divided into six thousand six hundred and sixty-seven shares of thirty dollars each; which capital stock may be increased to the sum of six hundred thousand dollars in shares of like amount, and the number of our associates increased from time to time, as may be determined by a vote of a majority in interest of the shareholders, in pursuance of this certificate of association and of said act. The names and places of residence of the several directors, officers, and shareholders and the number of shares of the capital stock owned and held by each are as follows, to wit:

John Owen, president and director, who resides in the city of Detroit, in the county of Wayne and State of Michigan, holds
26 three hundred and fifty-one shares.

John Roberts, vice-president and director, who resides in the city of Detroit, in the county of Wayne and State of Michigan, holds one hundred and twenty-seven shares.

Henry K. Sanger, cashier and director, who resides in the city of Detroit, in the county of Wayne and State of Michigan, holds one hundred shares.

Walter Ingersoll, assistant cashier and director, who resides in the city of Detroit, in the county of Wayne and State of Michigan, holds three hundred and twenty-five shares.

Erastus Corning, director, who resides in the city of Albany, in the county of Albany and State of New York, holds one thousand shares.

Dean Richmond, who resides in the city of Buffalo, in the county of Erie and State of New York, holds five hundred shares.

Asa Sprague, who resides in the city of Rochester, in the county of Monroe and State of New York, holds three hundred and thirty-four shares.

John Rosewarne, who resides in Canandaigua, in the county of Ontario and State of New York, holds one hundred shares.

John L. Schoolcraft, who resides in the city of Albany, in the county of Albany and State of New York, holds four hundred and thirty-four shares.

J. N. L. Pruyn, who resides in the city of Albany, in the
27 county of Albany and State of New York, holds six hundred and sixty-seven shares.

David Hamilton, who resides in the city of Albany, in the county

of Albany and State of New York, holds two hundred and thirty-four shares.

J. C. Y. Paige, who resides in the city of Albany, in the county of Albany and State of New York, holds twenty-eight shares.

Benjamin C. Raymond, who resides in the city of Albany, in the county of Albany and State of New York, holds fifty shares.

Thurlow Weed, who resides in the city of Albany, in the county of Albany and State of New York, holds one hundred and one shares.

Edward Whitehouse, who resides in the city of New York, in the county of New York and State of New York, holds one hundred and sixty-seven shares.

William F. Weld, who resides in the city of Boston, in the county of Suffolk and State of Massachusetts, holds five hundred and one shares.

H. B. Denman, who resides in the village of Dowagiac, in the county of Cass and State of Michigan, holds seventeen shares.

Nathan Dickinson, who resides in the village of Romeo, in the county of Macomb and State of Michigan, holds one hundred and thirty-four shares.

Justus Ingersoll, who resides in the city of Detroit, in the county of Wayne and State of Michigan, holds thirty-three shares.

H. K. Sanger and John Owen, who reside in the city of Detroit, in the county of Wayne and State of Michigan, hold one thousand and twenty shares.

Caleb Van Husan, who resides in the city of Detroit, in the county of Wayne and State of Michigan, holds three hundred and thirty-nine shares.

28 Dickinson & Giddings, who reside in the village of Romeo, in the county of Macomb and State of Michigan, hold sixty-seven shares.

L. B. Tafft, who resides in the city of Chicago, in the county of Cook and State of Illinois, holds thirty-eight shares.

The period at which this association shall commence shall be on the first day of June, one thousand eight hundred and sixty. The period at which this association shall terminate shall be on the first day of June, one thousand eight hundred and ninety.

Witness our respective hands and seals the twenty-sixth day of May, one thousand eight hundred and sixty.

J. OWEN. [L. S.]
JOHN ROBERTS. [L. S.]
H. K. SANGER. [L. S.]
WALTER INGERSOLL. [L. S.]
JUSTUS INGERSOLL. [L. S.]
CALEB VAN HUSAN. [L. S.]
H. K. SANGER & J. OWEN. [L. S.]
ERASTUS CORNING, [L. S.]
By J. OWEN, *His Attorney-in-Fact.*
DEAN RICHMOND, [L. S.]
By J. OWEN, *His Attorney-in-Fact.*

ASA SPRAGUE, [L. S.]
By H. K. SANGER,
His Attorney-in-Fact.
JOHN ROSEWARNE, [L. S.]
By H. K. SANGER,
His Attorney-in-Fact.
JOHN L. SCHOOLCRAFT, [L. S.]
By H. K. SANGER,
His Attorney-in-Fact.
THURLOW WEED, [L. S.]
By H. K. SANGER,
His Attorney-in-Fact.
J. C. Y. PAIGE, [L. S.]
By H. K. SANGER,
His Attorney-in-Fact.
29 BENJAMIN C. RAYMOND, [L. S.]
By H. K. SANGER,
His Attorney-in-Fact.
EDWARD WHITEHOUSE, [L. S.]
By H. K. SANGER,
His Attorney-in-Fact.
DAVID HAMILTON, [L. S.]
By J. OWEN, *His Attorney-in-Fact.*
J. N. L. PRUYN, [L. S.]
By J. OWEN, *His Attorney-in-Fact.*
H. B. DENMAN, [L. S.]
By J. OWEN, *His Attorney-in-Fact.*
NATHAN DICKINSON, [L. S.]
By J. OWEN, *His Attorney-in-Fact.*
DICKINSON & GIDDINGS, [L. S.]
By J. OWEN, His *Attorney-in-Fact.*
L. B. TAFFT, [L. S.]
By J. OWEN, *His Attorney-in-Fact.*
WILLIAM F. WELD, [L. S.]
By H. K. SANGER,
His Attorney-in-Fact.

Signed & sealed in presence of—
R. RILEY.
C. N. GANSON.

Acknowledgment.

STATE OF MICHIGAN, } ss:
Wayne County, }

Be it remembered that on this twenty-sixth day of May, A. D. 1860, personally appeared before me, the above-named John Owen, John Roberts, Henry K. Sanger, Walter Ingersoll, Justus Ingersoll, Caleb Van Husen, to me well known to be the same persons named as principals in the foregoing instrument, and each for himself acknowledged the same to be his free act and deed for the uses and

purposes therein expressed; and the said Henry K. Sanger, as agent and attorney-in-fact, acknowledged the same to be the free act and deed of Asa Sprague, John Rosewarne, John L. Schoolcraft, Thurlow Weed, J. C. Y. Paige, Benjamin C. Raymond, Edward Whitehouse, and William F. Weld; and said John Owen, as agent and
30 attorney-in-fact, acknowledged the same to be the free act and deed of Erastus Corning, Dean Richmond, David Hamilton, J. N. L. Pruyn, H. B. Denman, Nathan Dickinson, Dickinson & Giddings, and Levi B. Tafft for the uses and purposes therein expressed.

Witness my hand and seal of office the day and year above written.

[SEAL.] C. N. GANSON,
Notary Public, Wayne County, Michigan.

Acknowledgment.

STATE OF MICHIGAN, } *ss:*
Wayne County, }

Be it remembered that on this twenty-sixth day of May, one thousand eight hundred and sixty, personally appeared before the undersigned, a notary public in and for the county of Wayne, State of Michigan, the persons whose names are subscribed to the foregoing certificate of association, to me personally known to be the same persons therein mentioned, and severally acknowledged that they executed the same for the purposes therein expressed.

Witness my hand and seal of office the day and year above written.

[SEAL.] C. N. GANSON,
Notary Public, Wayne County, Michigan.

STATE OF MICHIGAN, } *ss:*
County of Wayne, }

I, Horace S. Roberts, register of deeds in an- for the county of Wayne, State of Michigan, do hereby certify that the above and foregoing is a true and correct copy of an original instrument recorded in the office of the register of deeds in and for
31 said county on the twenty-sixth day of May, A. D. 1860, in Book marked 81 of Deeds, at page 627, &c., &c., and that the same is a full and correct copy of said original instrument and of every part thereof.

Given under my hand, at the city of Detroit, in the county of Wayne and State of Michigan, the 28th day of May, eighteen hundred and sixty.

[SEAL.] HORACE S. ROBERTS,
Reg'r of Deeds, Wayne Co., Mich.

32 The plaintiff, further to maintain the issue on its part, offered in evidence a certified copy of the judgment sued on, being a judgment of the circuit court of the county of Wayne, State

of Michigan, including the record and all proceedings in said action; which judgment and record were received in evidence and are as follows:

33 EXHIBIT No. 2.

STATE OF MICHIGAN, } ss:
County of Wayne, }

The Circuit Court for the County of Wayne.

To the sheriff of the county of Wayne, Greeting:

[L. S.] In the name of the people of the State of Michigan you are commanded that the goods and chattels of Anson Eldred, Elisha Eldred, and Uri Balcom, defendants, and for the want thereof, then of their lands and tenements in your bailiwick you cause to be made the sum of four thousand two hundred and eleven dollars and fifty-six cents, which the Michigan Insurance Bank, plaintiff, lately, in the circuit court for the county of Wayne aforesaid, at the court-house, in Detroit, recovered against them for its damages which it had sustained on occasion of the non-performance of certain promises and undertakings, and also thirty-six dollars and twenty-three cents, which were awarded to the said plaintiff for its costs and charges by it about its suit in that behalf expended, whereof the said defendants stand convicted, as appears of record; and have you that money before the circuit judge for the county aforesaid, at the court-house, in the city of Detroit, on the second day of September next, then and there to render to the said plaintiff for its damages and costs aforesaid, and have you then and there this writ.

Witness the Hon. Benjamin F. H. Witherell, circuit judge, at Detroit, on the nineteenth day of June, in the year of our Lord one thousand eight hundred and sixty-two.

D. WALKER, *Clerk.*

34 (Endorsed:) Rec'd this execution June 20th, 1862, at 9 o'clock a. m. Mark Flanigan, sheriff, by Anson Waring, dep. sheriff.

The sheriff will levy this writ on the following property and upon no other—that is to say, that certain indenture of lease dated 23rd day of January, A. D. 1850, made by Clement Lafferty to James C. Ladue and Levi E. Dolson, recorded in Wayne county Registry of Deeds, Liber 37, folio 397, 398; also the building on the lot mentioned in the said lease; also one steam-engine and two boilers; also one bark-mill, thirty-three tanners' wheels; also fifty vats, being the same property attached in this cause.

E. N. & O. B. WILCOX,
Pl'ff's Atty's.

STATE OF MICHIGAN, } ss:
Wayne County, }

I hereby certify and return that by virtue of the within writ I did, on the 20th day of June, A. D. 1862, levy upon the property described in the levy hereto annexed; and I further certify and return that I advertised the same according to law, and on the 10th day of November, A. D. 1862, I was ordered by E. N. Willcox, one of pl'ff's attorneys, to discontinue said sale and return the within writ without further action.

Detroit, Dec. 10th, 1862.

MARK FLANIGAN, *Sheriff,*
By ANSON WARING, *Dep. Sheriff.*

(Endorsed:) No. 10515. The circuit court for the county of Wayne. Mich. Ins. Bank *vs.* Anson Eldred *et al.* *Fieri facias.* Judgment rendered May 13, 1862. Damages, $4,211.56; costs, $36.23. *Fieri facias* and return, 38. Filed January 3rd, 1863. J. M. Dalrymple, dep. clerk. E. N. & O. B. Wilcox, plaintiff's attorneys.

35 3.

STATE OF MICHIGAN, } ss:
Wayne County, }

By virtue of the annexed writ of *fieri facias* issued out of the circuit court for the county of Wayne and State of Michigan and to me directed, and delivered against the goods and chattels, lands and tenements of Anson Eldred, Elisha Eldred, and Uri Balcom, I have, this 20th day of June, A. D. 1862, levied upon and taken the following property, to wit: All the right, title, and interest of Anson Eldred and Elisha Eldred, two of the within-named defendants, in and to a certain indenture of lease and the rights and privileges thereby secured and described as follows, to wit: A certain indenture of lease bearing date the 23rd day of January, A. D. 1850, made by Clement Lafferty, of the town of Springwells, in said county, to James C. Ladue and Levi E. Dolson, which said indenture of lease is recorded in the office of the register of deeds for Wayne county, in Liber 37 of Deeds, on folios 397 & 398; also the buildings on said lot (mentioned in the said lease) of all and every kind; also one steam-engine & 2 boilers; also one bark-mill; also thirty-three tanners' wheels, and also fifty (50) vats; all of which said property was taken by me by virtue of a writ of attachment issued out of said court at the suit of the Michigan Insurance bank and against the said defendants, Anson & Elisha Eldred and Uri Balcom, on the 14th day of August, A. D. 1861; all of which said property is situated in the city of Detroit, Wayne county, Michigan.

Detroit, June 20th, 1862.

MARK FLANIGAN, *Sheriff,*
By ANSON WARING, *Dep. Sheriff.*

36 *Sheriff's Sale.*

By virtue of a writ of *fieri facias* issued out of the circuit court for the county of Wayne and State of Michigan and to me directed, and delivered against the goods and chattels, lands and tenements of Anson Eldred, Elisha Eldred, and Uri Balcom, I did, on the 20th day of June, A. D. 1862, levy upon and take all the right, title, and interest of Anson Eldred and Elisha Eldred, two of the said defendants in said writ named, in and to a certain indenture of lease and the rights and privileges thereby secured and described as follows, to wit: A certain indenture of lease on lot No. one of the subdivision of the Lafferty farm, bearing date the 23d day of January, A. D. 1850, made by Clement Lafferty, of the town of Springwells, in said county, to James C. Ladue and Levi R. Dolson, which said indenture of lease is recorded in the office of the register of deeds for Wayne county, in Liber 37 of Deeds, on folios 397 and 398; also the buildings on said lot mentioned in said lease of all and every kind; also one steam-engine and two boilers; also one bark-mill; also thirty-three tanners' wheels, and also fifty vats, and being in the city of Detroit, Wayne county, Michigan; all of which I shall expose for sale at public auction on the premises known as Eldred's tannery, on Thursday, the 30th day of October, A. D. 1862, at 10 o'clock a. m.

Detroit, August 23rd, 1862.

MARK FLANIGAN, *Sheriff*,
By ANSON WARING, *Dep. Sheriff*.

E. N. & O. B. WILLCOX,
Plaintiff's Attorneys.

37 The above sale is postponed to Monday, 10th November, 1862, at same hour and place.

Detroit, October 30th, 1862.

MARK FLANIGAN, *Sheriff*,
By ANSON WARING, *Dep. Sheriff*.

The above sale is further postponed to Monday, 17th Nov., 1862, at the same hour and place.

Detroit, November 1, 1862.

MARK FLANIGAN, *Sheriff*,
By ANSON WARING, *Dep. Sheriff*.

38 STATE OF MICHIGAN:

IN the Circuit Court for the County of Wayne.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, ELISHA ELDRED, and URI BALCOM.

Pleas of the circuit court of Wayne county, in the city of Detroit, in the county of Wayne and State of Michigan, on the thirteenth day of May, in the year one thousand eight hundred and sixty-two.

WAYNE COUNTY, *To wit:*

The Michigan Insurance Bank, plaintiff in this suit, puts in its place E. N. and O. B. Willcox, its attorneys, to prosecute this suit against Anson Eldred, Elisha Eldred, and Uri Balcom in a plea of attachment.

WAYNE COUNTY, *To wit:*

Anson Eldred, Elisha Eldred, and Uri Balcom, defendants in this suit, put in their place Walker & Kent, their attorneys, at the suit of said Michigan Insurance bank, in the plea aforesaid.

WAYNE COUNTY, *To wit:*

Be it remembered that heretofore, to wit, at Detroit, in the county and State aforesaid, and on the fourteenth day of August, A. D. 1861, according to the form of the statute in such case made and provided, a certain writ of attachment was issued out of said court; which said writ is in the following words and figures, viz:

STATE OF MICHIGAN, } *ss:*
County of Wayne, }

By virtue of the annexed writ of attachment I have, this 4th day of August, A. D. 1861, seized and taken the property and effects
39 of which the following is an inventory, it being the property mentioned in a certain indenture of lease, bearing date the twenty-third day of January, A. D. 1850, made by Clement Lafferty, of the town of Springwells, in the county of Wayne and State of Michigan, to James C. Ladue & Levi E. Dolson, of a certain lot situate in the township of Springwells, county of Wayne, & known and described as all that piece or parcel of land lying and being in the town of Springwells, county of Wayne, and State of Michigan, and more particularly described as all that part of the Lafferty farm, so called, in the town of Springwells, in the subdivision thereof No. one (1), on the bank of the River Detroit, which is bounded by River road, so called, westerly by a lot formerly owned and occupied by C. Reeve and brother and known as lot number two (2) of said farm, and southerly by the River Detroit; easterly by the land specially referred to in said lease as the east-

erly boundary, which said lot is one hundred and seventy-four feet front, more or less, running back to the channel bank of the Detroit river, with all and singular the premises therein mentioned and described, which said lease is recorded in the office of the register of deeds for the county of Wayne and State of Michigan, in Liber Thirty-seven (37) of Deeds, on pages 397 & 398, and which lease was duly assigned by Ladue and Dolson to Andrew Ladue and Frances E. Eldred, which assignment is of record in the registry of deeds for said county, in Liber 56 of Deeds, folios 265 & 266, & was further assigned by said Andrew Ladue to Frances E. Eldred aforesaid, which assignment is also of record in the registry of deeds for said county of Wayne, in Liber 59 of Deeds, pages 580 & 581, with the building & appurtenances thereon & all the fixtures & machinery of every name & nature now on said premises or in the buildings thereon.

Detroit, August 14th, 1861.

(Signed) MARK FLANIGAN, *Sheriff*,
By ANSON WARING, *Dep. Sheriff*.

40 STATE OF MICHIGAN, } ss:
County of Wayne, }

By virtue of the annexed writ of attachment I have, this 14th day of August, A. D. 1861, seized and taken the property and effects of which the following is an inventory, to wit: All the right, title, and interest of Anson Eldred and Elisha Eldred, two of the defendants in the annexed writ of attachment, in and to a certain indenture of lease and the rights and privileges thereby secured, described as follows, to wit: A certain indenture of lease bearing date the 23rd day of January, A. D. 1850, made by Clement Lafferty, of the town of Springwells, in said county, to James C. Ladue and Levi E. Dolson, which said lease is recorded in the office of the register of deeds for Wayne county, in Liber 37 of Deeds, on folios 397 & 398; also the buildings on said lot of all and every kind; also 1 steam-engine & two boilers; also one bark-mill, and also thirty-three tanner's wheels, & also fifty vats.

(Signed) MARK FLANIGAN, *Sheriff*,
By ANSON WARING, *Dept. Sheriff*.

We, the undersigned, freeholders residing in the county of Wayne and State of Michigan, having first been duly sworn by Anson Waring, a deputy sheriff in and for said county, to make a true appraisement of all the property seized by him by virtue of the annexed writ of attachment, do appraise the several articles or parcels of property so attached as follows:

The lease mentioned in the foregoing inventory, with all the rights and privileges thereby secured	$1,500 00
Also all the buildings of every kind on said lot	3,000 00
" 1 steam-engine	400 00
" 2 boilers	400 00

	Also 33 tanner's wheels	500 00
41	Also 1 bark-mill	10 00
	" 50 vats	500 00
		$6,310 00

(Signed) JOHN FULLER,
L. E. DOLSON,
Appraisers.

STATE OF MICHIGAN, } ss:
Wayne County, }

Henry R. Sanger, of Detroit, in said county, being duly sworn, says that he is cashier of the Michigan Insurance bank and makes this affidavit in behalf of the said bank, which is a corporation under and by virtue of the laws of the State of Michigan, and is the plaintiff in the annexed writ herein named; that deponent knows the facts herein stated of his own knowledge; that Anson Eldred, Elisha Eldred, and Uri. Balcom, who are the defendants in the annexed writ named, are indebted to the said The Michigan Insurance Bank, the said plaintiff, the sum of six thousand seven hundred dollars, over and above all legal set-offs, and that the same is due upon contract express.

And deponent further says that he knows that the said Anson Eldred, Elisha Eldred, and Uri. Balcom, the said defendants, are not residents of this the said State of Michigan, and have not either of them resided therein for three months immediately preceding the time of making this affidavit.

(Signed) H. R. SANGER.

Sworn to and subscribed before me this 14th day of August, A. D. 1861, at Detroit, in said county.

HENRY P. SANGER,
Notary Public, Wayne County, Michigan.

42 And afterwards, to wit, on the eighth day of October, A. D. 1861, a certain writ of attachment was duly filed in the office of the clerk of said court; which said writ and the return of execution thereon are in the words and figures following, to wit:

STATE OF MICHIGAN, } ss:
County of Wayne, }

The circuit court for the county of Wayne to the sheriff of the county of Wayne, Greeting:

In the name of the people of the State of Michigan you are commanded to attach so much of the lands, tenements, goods, chattels, moneys, and effects of the defendants, Anson Eldred, Elisha Eldred, & Uri. Balcom, not exempt from execution, wheresoever the same may be found within the county of Wayne, as will be sufficient to satisfy the demand of The Michigan Insurance Bank, plaintiff, and

safely keep the same to satisfy any judgment that may be recovered by the plaintiff in this attachment.

You are also commanded to summon defendants, if to be found within this State, to appear before the circuit court for the county of Wayne, at the court-house, in the city of Detroit, on Tuesday, the third day of September, at 9 o'clock in the forenoon of said day, to answer the plaintiff; and of this writ make due return.

Witness the Honorable Benjamin F. H. Witherell, circuit judge, at the city of Detroit, this 14th day of August, in the year of our Lord one thousand eight hundred and sixty-one.

[L. S.] D. WALKER, *Clerk.*

43 (Endorsed.)

STATE OF MICHIGAN, } ss:
County of Wayne, }

I do hereby return that by virtue of the within writ of attachment I have this 14th day of August, A. D. 1861, attached the following property, to wit, all the right, title, and interest of Anson Eldred & Elisha Eldred, two of the defendants in said writ of attachment, in & to a certain indenture of lease and the rights and privileges thereby secured, and described as follows, to wit, a certain indenture of lease bearing date the 23d day of January, A. D. 1850, made by Clement Lafferty, of the town of Springwells, in said county, to James C. Ladue and Levi E. Dolson; which said indenture of lease is recorded in the office of the register of deeds for Wayne county, in Liber 37 of Deeds, on folios 397 & 398; also the buildings on the said lots (mentioned in the said lease) of all and every kind; also one steam-engine and two boilers; also one bark-mill, and also thirty-three tanners' wheels, & also fifty vats; all of which said property was appraised by John Fuller and Levi E. Dolson, two disinterested freeholders, who were by me first duly sworn to make a true appraisement thereof, and whose appraisal is in writing, signed by themselves, & herewith returned; and I do further return that, after due search and diligent inquiry, I am unable to find Anson Eldred, Elisha Eldred, and Uri. Balcom, the defendants in said attachment named, in my bailiwick.

Detroit, Sept. 4th, 1861.

(Signed) MARK FLANIGAN, *Sheriff,*
By ANSON WARING, *Dept. Sheriff.*

Fees, $14.73.

44 (Endorsed:) No. —. The circuit court for the county of Wayne. Mich. Ins. Bank *vs.* Anson *et al.* Affidavit and writ of attachment. Filed Oct. 8th, 1861. D. Walker, clerk. E. N. & O. B. Wilcox, plaintiff's att'y.

And afterwards, to wit, on the sixteenth day of December, A. D. 1861, a certain affidavit of publication was duly filed in the office of the clerk of said court; which said affidavit and endorsement thereon are in the words and figures following, to wit:

STATE OF MICHIGAN, } ss:
County of Wayne, }

Thomas Kearney, of the city of Detroit, in said State and county, being duly sworn, deposes and says that the annexed notice has been duly published in the Detroit Free Press, a newspaper published and circulating in said State and county, at least once in each week for six successive weeks, and that the first publication thereof was on the twenty-fifth day of September, A. D. 1861; that he is employed in the office of said newspaper, and that he knows well the facts stated therein.

(Signed) THOMAS KEARNEY.

Sworn to & subscribed before me this sixteenth day of December, 1861, at said city & county.

WM. WALKER,
Notary Public of Wayne Co., Mich.

45 *Attachment Notice.*

Notice is hereby given that a writ of attachment was issued out of the circuit court for the county of Wayne, State of Michigan, on the 14th day of August, A. D. 1861, in favor of the Michigan Insurance Bank against Alanson Eldred, Elisha Eldred, and Uri. Balcom for the sum of six thousand seven hundred dollars ($6,700.00) and certain property of said defendants, Anson Eldred and Elisha Eldred, has been attached thereunder, but said writ was not served upon either of the defendants for the reason that neither could be found in said county, and said defendants have not appeared in the suit commenced by said writ.

Dated Detroit, Sept. 24th, 1861.

E. N. & O. B. WILCOX,
Plaintiff's Attorneys.

Printer's Bill.

2 folios, 7 times	$4 00
Affidavit of publication	25
	$4 25

Received payment, ——— ———.

Filed Dec. 16th, 1861.

W. H. REXFORD,
Dep. Clerk.

And afterwards, to wit, on the sixteenth day of December, A. D. 1861, the appearance of the said defendants, by the pl'ff's attorneys, was entered on the common-rule book kept in the office of the clerk of said court; which said appearance is in the words and figures following, to wit:

46 THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, ELISHA ELDRED, & URI. BALCOM.

In attachment.

DECEMBER 16TH, 1861.

In this cause, on filing affidavit of due publication of notice of attachment and on motion of E. N. & O. B. Willcox, plaintiff's attorneys, it is ordered that the appearance of said defendants be, and the same is hereby, entered.

(Sig'd) E. N. & O. B. WILLCOX,
Pl'ff's Att'ys.

And afterwards, to wit, on the sixteenth day of December, A. D. 1861, a certain declaration was duly filed in the office of the clerk of said court; which said declaration is in the words and figures following, to wit:

STATE OF MICHIGAN, } *ss:*
County of Wayne, }

In the Circuit Court for the County of Wayne, of the Sixteenth Day of December, A. D. 1861.

The Michigan Insurance Bank, a corporation created by and doing business under the laws of the State of Michigan, plaintiff herein, by E. N. & O. B. Wilcox, its attorneys, complains of Anson Eldred, Elisha Eldred, & Uri. Balcom, defendants herein, the property of the first two of whom has been duly attached & notice of said attachment published for six successive weeks, as required by the statute
47 in cases where there is no personal service of the writ, an affidavit of which publication is duly filed, of a plea of trespass on the case upon promises, filing this declaration as commencement of suit, for that whereas the defendants, on the first day of September, A. D. 1861, at Detroit, in said county of Wayne, were indebted to the plaintiff in the sum of — dollars for the price and value of goods then and there sold and delivered by the plaintiff to the defendants at their request, and in a like sum for the price and value of work then and there done and materials for the same provided by the plaintiff for the defendants at their request, and in a like sum for money then and there lent by the plaintiff to the defendants at their request, and in a like sum for money then and there paid by the plaintiff for the defendants at their request, and in a like sum of money then and there received by the defendants for the use of the plaintiff, and in a like sum for money then and there found to be due from the defendants to the plaintiff on an account stated between them.

And thereupon the said defendants, afterwards and on the day and year aforesaid, in consideration of the premises respectively, then and there promised the plaintiff to pay it the said several sums of money respectively on request, yet the said defendants have disregarded their said promises and have not (although often requested

so to do) paid any of the said sums of money or any part thereof, to the plaintiff's damage of — dollars; and therefore it brings suit, &c.

E. N. & O. B. WILCOX,
Plaintiff's Attorneys.

48 To the above-named defendants:

Take notice that on the trial of the above cause the plaintiff under the money counts will give in evidence — certain —, copy of which given below.

——— ———,
Plaintiff's Attorneys.

Copy.

$4,000. DETROIT, *June 12th*, 1861.

Sixty days after date I promise to pay to the order of Eldred & Balcom four thousand dollars at the Michigan Insurance bank, value received.

(Signed) F. E. ELDRED.

Endorsed: " Eldred & Balcom."

Which was endorsed as follows: No. —. Circuit court, county of ——. The Mich. Ins. Bank *vs.* Anson Eldred, Elisha Eldred, & Uri. Balcom. *Narr.* To the within-named defendant: Take notice that on filing a declaration in this cause (of which the within is a true copy) as commencement of suit a rule was entered in the book of common rules kept by the clerk of said court in his office, in ——, requiring you to appear and plead to said declaration within twenty days after service on you of a copy thereof and notice of said rule, or judgment, &c. Yours, &c., E. N. & O. B. Willcox, plaintiff's attorneys. Filed Dec. 16, 1861. W. H. Rexford, dep. clerk.

And afterwards, to wit, on the twenty-seventh day of December, A. D. 1861, a certain plea was duly filed in the office of the clerk of said court; which said plea and the endorsement thereon are in the words and figures following, to wit:

49 *Plea Non-Assumpsit, with Notice of Set-off.*

The Circuit Court for the County of ——.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, ELISHA ELDRED, & URI. BALCOM.

And the said Anson Eldred, one of the defendants in this suit, by Walker & Kent, his attorneys, comes and demands a trial of the matters set forth in the plaintiff's declaration.

WALKER & KENT,
Att'ys for Anson Eldred.

Please to take notice that the said defendants on the trial of the above cause will insist upon and give in evidence under the general

issue above pleaded that the said plaintiff, at the time of the commencement of the action aforesaid against the said defendants, was and still is indebted unto the said defendants in the sum of one hundred thousand dollars, lawful money of the United States of America, for divers goods, wares, and merchandises before that time sold and delivered by the said defendants to the said plaintiff and at the special instance and request of the said plaintiff.

And the further sum of twenty thousand dollars, of like lawful money, for the work and labor, care and diligence, of the said defendants by the said defendants before that time done, performed, and bestowed in and about the business of the said plaintiff and for the said plaintiff and at the like request of the said plaintiff.

And the further sum of ten thousand dollars, of like lawful money, for so much money before that time lent and advanced by the said defendants to the said plaintiff and at the like request of the said plaintiff.

50 And for other money by the said defendant before that time paid, laid out, and expended for the said plaintiff and at the like request of the said plaintiff.

And for other money by the said plaintiff before that time had and received to and for the use of the said defendant.

And also that the said plaintiff before the commencement of this action accounted, together with the said defendant, of and concerning the said demand of the said plaintiff against the said defendant, and also of and concerning divers other sums of money and accounts between the said plaintiff and the said defendant, and upon such accounting the said plaintiff was found to be in arrears and indebted to the said defendant in the further sum of five thousand dollars, of like lawful money, which the said plaintiff undertook and then and there faithfully promised the said defendants well and truly to pay unto the said defendant when the said plaintiff should be thereunto afterwards requested, which several sums of money, or so much thereof as will be sufficient for that purpose, the said defendant will set off against the demand of the said plaintiff, to be proved at the trial, and have the balance certified in — favor.

Dated the 27th day of December, 1861.

Yours, &c., WALKER & KENT,
Attorneys for Defendant, Anson Eldred.

To E. N. & O. B. Wilcox, Esqs., attorneys for plaintiff.

Endorsed as follows: No. 10515. Wayne county circuit court. Michigan Insurance Bank *vs.* Anson Eldred, Elisha Eldred, & Uri. Balcom. Walker & Kent, att'ys for Anson Eldred. Filed Dec. 27, 1861. W. H. Rexford, dep. clerk.

51 And afterwards, to wit—that is to say, at a session of the circuit court for the county of Wayne held at the court-house, in the city of Detroit, on the twenty-second day of April, in the year one thousand eight hundred and sixty-two.

Present: Hon. B. F. H. Witherell, circuit judge.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, ELISHA ELDRED, & URI. BALCOM.

This cause coming on to be heard, the plea of the defendants heretofore pleaded by them is withdrawn on motion of Walker and Kent, their attorneys.

And afterwards, to wit, on the twenty-second day of April, A. D. 1862, a certain order of default of Elisha Eldred and Uri Balcom was entered on the common rule book kept in the office of the clerk of said court; which order of default is in the words and figures following, to wit:

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, ELISHA ELDRED, AND URI. BALCOM.

In attachment.

APRIL 22ND, 1862.

The declaration in this cause, after service of the writ of attachment, having been filed, and the appearance of said defendants having been entered, and more than twenty days having elapsed since the filing of said declaration, and said defendants Elisha Eldred and Uri Balcom having failed to plead to said declaration or demur thereto, on motion of E. N. & O. B. Willcox, attorneys for plaintiff, ordered that the default of the said defendants Elisha Eldred and Uri Balcom be, and the same is hereby, entered.

(Sig'd) E. N. & O. B. WILLCOX,
Pl'ff's Att'ys.

52 And afterwards, to wit, on the tenth day of May, A. D. 1862 an order making the default of the defendants absolute was entered on the common rule book kept in the office of the clerk of said court; which order is in the words and figures following, to wit:

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, ELISHA ELDRED, & URI. BALCOM.

MAY 10TH, 1862.

The default of defendants for want of appearance and plea having been heretofore entered in this cause, and more than four days in term having since elapsed, and no motion having been made to set aside the same, on motion of E. N. & O. B. Willcox it is ordered that said default be, and the same is hereby, made absolute; that judgment interlocutory be entered, and that it be referred to the clerk to assess the plaintiff's damages.

(Sig'd) E. N. & O. B. WILLCOX,
Pl'ff's Att'ys.

And on this day—that is, to-day—at a session of the circuit court for the county of Wayne held at the court-house, in the city of Detroit, on the thirteenth day of May, in the year one thousand eight hundred and sixty-two.

Present: Hon. B. F. H. Witherell, circuit judge.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, ELISHA ELDRED, & URI. BALCOM.

The plea of the defendant Anson Eldred heretofore pleaded by him having been withdrawn, and the default of the defendants Elisha Eldred and Uri. Balcom having been duly entered, and the same having become absolute, and the damages of the said plaintiff on occasion of the premises having been duly assessed at the sum of four thousand two hundred and eleven dollars and fifty-
53 six cents over and above their costs and charges by them about their suit in this behalf expended, therefore it is considered that said plaintiffs do recover against said defendants their damages aforesaid, together with their costs aforesaid, to be taxed, and that said plaintiff have execution therefor.

STATE OF MICHIGAN, } *ss:*
County of Wayne, }

I, Jared Patchin, clerk of the circuit court for the county of Wayne, do hereby certify that the foregoing is correctly taken and copied from the record of the proceedings of said court in said cause, and that the same has been examined and compared by me with the original of said record in this cause, and that it is a correct transcript therefrom and of the whole of such original as well as of the execution & endorsements thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Detroit, this sixth day of November, in the year one thousand eight hundred and sixty-three.

[SEAL.] JARED PATCHIN, *Clerk.*

Fees, $8.75.

STATE OF MICHIGAN, } *ss:*
Wayne County, }

I, B. F. H. Witherell, sole judge of the circuit court for the county of Wayne, being in the third judicial circuit, for the State of Michigan, do hereby certify that the foregoing attestation of record is in due form and according to law, and that I am well acquainted with the handwriting of Jared Patchin, clerk of said court, and that the signature of the said clerk signed to said attestation of record
54 is in his proper handwriting and is his genuine signature, and that he is the clerk of said court, and that said court is a court of record, and that the seal affixed to said attestation of record is the seal of the said circuit court.

In witness whereof I have hereunto set my hand this sixth day of November, 1863.

B. F. H. WITHERELL,
Circuit Judge for the County of Wayne, Being in the Third Judicial Circuit, for the State of Michigan.

[5c. inter. revenue stamp.]

Which was endorsed as follows: State of Michigan. The circuit court for the county of Wayne. The Michigan Insurance Bank *vs.* Anson Eldred, Elisha Eldred, & Uri. Balcom. Certified copy of judgment record.

55 Thereupon the plaintiff rested its case.

DEFENDANTS' COUNSEL: May it please the court, I suppose the court takes judicial notice of the record in this suit so far as it is before the court. The record of service is this: "Served on the within-named Anson Eldred by leaving a copy of this summons at his usual place of abode in presence of a member of his family of suitable age and discretion, whom I informed of the contents thereof, he not being found, this third day of June, 1872. The within-named Elisha Eldred and Uri Balcom not found. C. H. Hamilton, deputy." So that the service in this case was made on the third day of June, 1872.

COURT: You offer the writ and return, do you, in evidence?

DEFENDANTS' COUNSEL: Yes, sir; if it needs introduction in evidence I offer it.

COURT: I think you better offer it.

DEFENDANTS' COUNSEL: I offer the writ and return in evidence.

The writ bears date May 11th, 1872, and the date of the return is June 3rd, 1872; which writ and return are as follows, to wit:

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the marshal of the eastern district of Wisconsin, Greeting:

You are hereby commanded to summon Anson Eldred, Elisha Eldred, & Uri Balcom to appear before the circuit court of the United States of America for the eastern district of Wisconsin, in the seventh circuit, at the United States court-room, in the city of Milwaukee, on the first Monday of June ensuing, then and there to answer unto the Michigan Insurance bank in a plea of debt to its damage ten thousand dollars, which shall there and here be
56 made to appear; and of this writ make due return.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this eleventh day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

{ Seal of the United States Circuit Court, Eastern District of Wisconsin. }

EDWARD KURTZ, *Clerk.*

FINCHES, LYNDE & MILLER, *Attorneys.*

Endorsed: 249. Law docket C. The Michigan Insurance Bank *vs.* Anson Eldred, Elisha Eldred, & Uri Balcom. Summons. Damages, $10,000. Filed June 3rd, 1872. Edward Kurtz, clerk.

Served on the within-named Anson Eldred by leaving a copy of this summons at his usual place of abode in presence of a member of his family of suitable age and discretion, whom I informed of the contents thereof, he not being found, this third day of June, A. D. 1872; the within-named Elisha Eldred & Uri Balcom not found.

C. S. HAMILTON, *Marshal*,
By C. H. HAMILTON, *Deputy*.

Service	$2 00
Copy	60
Travel	06
	2 86

Thereupon defendants' counsel asked the court that this action be dismissed.

COURT: You are through with your proof, are you?

DEFENDANTS' COUNSEL: It appears by the certificate of incorporation of this bank——

PLAINTIFF'S COUNSEL: Do I understand you have rested?

57 DEFENDANTS' COUNSEL: We have called the attention of the court to the record as it is in this case and asked to dismiss the case on the plaintiff's own showing. The record here shows upon its face that the plaintiff was incorporated in June, 1860, the certificate of incorporation upon its face containing this provision: "The period at which this association shall commence shall be on the first day of June, 1860. The period at which this association shall terminate shall be on the 1st day of June, 1890"—being thirty years from the date of the incorporation. The constitution of the State of Michigan provides that no corporation shall be organized or authorized to be organized, except railroad corporations, for a longer period than thirty years. The charter therefore of this corporation has expired. Nothing has been shown that any proceedings have ever been taken under any law of Michigan to continue any right of action in this case, and hence the suit is abated. It is a well-established fact that upon the expiration of a charter of an incorporation all suits pending by it and all suits pending against it abate.

PLAINTIFF'S COUNSEL: I understand the learned counsel has offered the summons and the return of the marshal in evidence, and, if he desires to make a motion that the suit be dismissed, it seems to me that he is out of order in making a motion until he has formally rested his case.

Thereupon plaintiff's counsel called the attention of the court to section 8208 of Howell's Annotated Statutes of Michigan, volume 2, page 2028, and also to section 4867 of said statutes.

DEFENDANTS' COUNSEL: Any other construction of the statutes re-

ferred to would make it a violation of the constitution of Michigan to hold the suit is not abated by the expiration of its charter,
58 and that proceedings can go on in the name of the corporation, and without showing that it has any legal representation.

COURT: I think what the statute refers to there is the corporate business. Whenever the thirty years expires the corporation shall no longer carry on its corporate business. Does it follow that because it must then cease to be a corporate entity, to transact business for which it was created, that the legislature may not make a provision such as we find in these statutes for the collection of debts due it, and that creditors may not prosecute actions against it—that is, in the transaction of the ordinary corporate business?

DEFENDANTS' COUNSEL: "No corporation, except for municipal purposes or for construction of railroads, plank roads, and canals, shall be created for a longer time than thirty years." That means they shall not exist, they cannot exist, under the constitution, for a longer time than thirty years, and when the legislature undertakes to say, in the face of the constitution, of that provision, that a corporation may exist for three years longer than the time prescribed by the State constitution, it seems to me the constitution settles the matter rather than the statutes of the State.

Thereupon the court overruled the defendants' motion, and the defendant duly excepted.

DEFENDANTS' COUNSEL: We ask leave to offer a few other documents in evidence.

COURT: Very well.

Thereupon the defendant offered in evidence a certified copy of the articles of association of "The National Insurance Bank of Detroit."

59 Thereupon the plaintiff's counsel objected to the articles of association being received in evidence, because if received in evidence they do not show that the plaintiff does not exist as a corporation. They simply show the organization of a corporation called "The National Insurance Bank of Detroit."

The plaintiff's counsel further objected to the articles of association being received in evidence, because the incorporation of the plaintiff is not affirmatively and specifically denied in the answer, but denied on information and belief.

Thereupon the court made a ruling admitting said articles of association in evidence; to which ruling the plaintiff, by its counsel, duly excepted, and which articles of association and certificate are as follows:

60 *Articles of Association.*

We, the undersigned, the directors of "The Michigan Insurance Bank," in the city of Detroit, in the State of Michigan, having been authorized by the owners of two-thirds of the capital stock of said bank to change and convert the said bank into a national banking

association, under and according to the provisions of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, 1864, and to execute articles of association, do hereby, in our own behalf and in behalf of the stockholders whom we represent, make and execute the following articles of association:

1st. The name and title of the association into which the said Michigan Insurance bank is to be changed and converted shall be "The National Insurance Bank of Detroit."

2nd. The place where its banking-house or office shall be located and its operations of discount and deposit carried on and its general business conducted shall be the city of Detroit, in the county of Wayne and State of Michigan.

3d. The board of directors shall consist of five stockholders. The regular annual election of directors shall be held on the second Tuesday of January of each year; but if no election shall be held on that day it may be held on any other day according to the provisions of the tenth section of the act, and all elections shall be held according to such regulations as may be prescribed by the board of directors of the association not inconsistent with the provisions of the aforesaid act.

61 4th. The capital stock of this association shall be two hundred thousand and ten ($200,010) dollars, to be divided into shares of thirty ($30) dollars each; but the capital may be increased, according to the provisions of the thirteenth section of the act, to any sum not exceeding one million of dollars; and in case of the increase of the capital of the association each stockholder shall have the privilege of subscribing for such number of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

5th. The board of directors (a majority of whom shall be a quorum to do business) shall elect one of their number to be president of this association, who shall hold his office (unless he shall become disqualified or be sooner removed by a two-thirds vote of all the members of the board) for the term for which he was elected a director; and they shall have power to elect a vice-president, who shall also be a member of the board of directors, and to elect or appoint a cashier and such other officers and clerks as may be required to transact the business of the association; to fix the salaries to be paid to them and continue them in office or to dismiss them, as in the opinion of a majority of the board the interests of the association may demand. They shall also have power to define the duties of the officers and clerks of the association; to require bonds from them, and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held, and to appoint judges of the elections; to provide for an increase of the capital of the association, and to regulate the manner in which such

62 increase shall be made, and generally to do and perform all the acts that it may be legal for a board of directors to do

under the act aforesaid; and they shall also have the power to make all by-laws that it may be proper and convenient for them to make under said act for the general regulation of the business of the association and the entire management and administration of its affairs, which by-laws may prohibit, if the directors shall so determine, the transfer of stock owned by any stockholder who may be liable to this association, either as principal debtor or otherwise, without the consent of the board.

6th. This association shall continue for the period of twenty years from the date of the organization certificate unless sooner dissolved by the act of its stockholders owning at least two-thirds of its stock, who may dissolve and close up the association in such manner as they may deem to be for the interest of the stockholders and creditors of the association, but subject to the restrictions, requirements, and provisions of the act.

7th. The articles of association may be changed or amended at any time by stockholders owning a majority of the stock of the association in any manner not inconsistent with the provisions of the act, and the board of directors or any three stockholders may call a meeting of the stockholders for this purpose.

In witness whereof we, the directors aforesaid, for ourselves as such directors and in behalf of the stockholders of the Michigan Insurance bank (in the city of Detroit), have hereunto set our hands this twenty-sixth day of June, eighteen hundred and sixty-five.

JOHN OWEN.
JOHN ROBERTS.
WALTER INGERSOLL.

[10-ct. stamp U. S., June 26, '65.]

63 I certify that the articles of association of "The National Insurance Bank of Detroit" were executed in duplicate, and that one of the instruments so executed is the foregoing, and that the other, in all respects like the foregoing and stamped in the same manner, is on file with said bank.

WALTER INGERSOL, *Cashier.*

Dated Detroit, June 26th, 1865.

[5-ct. stamp. W. I., cas. June 26, '65.]

DISTRICT OF COLUMBIA, *City and County of Washington,* } *ss:*

Under the provisions of section 884 of the Revised Statutes of the United States, I, Edward S. Lacey, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original articles of association of "The National Insurance Bank of Detroit," Michigan, and of the whole of such original on file and of record in my office.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the Treas-

ury Department, in the city of Washington and District of Columbia, this 21st day of September, A. D. 1889.

E. S. LACEY,
[SEAL.] *Comptroller of the Currency.*

[Endorsed:] Exhibit B.

64 Thereupon the defendant offered in evidence the consent of certain stockholders authenticated by the Comptroller of the Currency; to which offer the plaintiff, by its counsel, made the same objections as it made to the receipt of the articles of association above in evidence, which objections were overruled and the plaintiff duly excepted and said consent of stockholders and certificate thereto attached were received in evidence and are as follows:

65 MICHIGAN INSURANCE BANK, DETROIT, ——, 1865.

I, Erastus Corning, of the city of Albany, State of New York, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) ERASTUS CORNING.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Erastus Corning for the conversion of said bank into a national association, and that said Erastus Corning at the time of the signing of said authority was and still is the owner of one thousand shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

66 MICHIGAN INSURANCE BANK, DETROIT, *June* —, 1865.

I, John V. L. Pruyn, of the city of Albany, State of New York, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) JOHN V. L. PRUYN.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by John V. L. Pruyn for the conversion of said bank into a national association, and that said John V. L. Pruyn at the time of the signing of said authority was and still is the owner of six hundred and sixty-seven shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

67 MICHIGAN INSURANCE BANK, N. Y., *June* 10, 1865.

I, Geo. I. Seney, of the city of Brooklyn, State of New York, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) GEO. I. SENEY.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Geo. I. Seney for the conversion of said bank into a national association, and that said Geo. I. Seney at the time of the signing of said authority was and still is the owner of three hundred and eighty-five shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

68 MICHIGAN INSURANCE BANK, DETROIT, *June* 9, 1865.

I, Joseph C. Y. Paige, of the city of Albany, State of New York, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) JOSEPH C. Y. PAIGE.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Joseph C. Y. Paige for the conversion of said bank into a na-

tional association, and that said Joseph C. Y. Paige at the time of the signing of said authority was and still is the owner of twenty-eight shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

69 MICHIGAN INSURANCE BANK, DETROIT, *June* 12, 1865.

I, Benjamin C. Raymond, executor, &c., of John L. Schoolcraft, deceased, of the city of Albany, State of New York, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) BENJ'N C. RAYMOND,
Executor, &c., of J'n L. Schoolcraft, Deceased.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Benj'n C. Raymond, executor, &c., for the conversion of said bank into a national association, and that said Benj'n C. Raymond, executor, &c., at the time of the signing said authority was and still is the owner of four hundred and thirty-four shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

70 MICHIGAN INSURANCE BANK, DETROIT, *June* 9, 1865.

I, Levi B. Taft, of the city of Chicago, State of Illinois, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) LEVI B. TAFT.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Levi B. Taft for the conversion of said bank into a national

association, and that said Levi B. Taft at the time of the signing of said authority was and still is the owner of thirty-eight shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

71 MICHIGAN INSURANCE BANK, BOSTON, *June* 10, 1865.

I, William F. Weld, of the city of Boston, State of Massachusetts, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) WM. F. WELD.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by William F. Weld for the conversion of said bank into a national association, and that said William F. Weld at the time of the signing of said authority was and still is the owner of five hundred and one shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

72 MICHIGAN INSURANCE BANK, DETROIT, *June* 7, 1865.

I, Walter Ingersoll, of the city of Detroit, State of Michigan, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) WALTER INGERSOLL.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Walter Ingersoll for the conversion of said bank into a national association, and that said Walter Ingersoll at the time of the signing of said authority was and still is the owner of three hundred and twenty-five shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

73 MICHIGAN INSURANCE BANK, DETROIT, *June* 9, 1865.

I, Henry B. Denman, of the village of Dowagiac, State of Michigan, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) H. B. DENMAN.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Henry B. Denman for the conversion of said bank into a national association, and that said Henry B. Denman at the time of the signing of said authority was and still is the owner of seventeen shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

74 MICHIGAN INSURANCE BANK, DETROIT, *June* 10, 1865.

I, Caleb Van Husan, of the city of Detroit, State of Michigan, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) CALEB VAN HUSAN.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Caleb Van Husan for the conversion of sand bank into a national association, and that said Caleb Van Husan at the time of the signing of said authority was and still is the owner of three hundred and thirty-nine shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

75 MICHIGAN INSURANCE BANK, DETROIT, *June* 10, 1865.

I, Samuel W. Salisbury, of *the* Canandaigua, State of New York, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) SAM'L W. SALISBURY.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Samuel W. Salisbury for the conversion of said bank into a national association, and that said Samuel W. Salisbury at the time of the signing of said authority was and still is the owner of one hundred shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

76 MICHIGAN INSURANCE BANK, SARATOGA, *June* 15, 1865.

I, Henry L. Jaques, of the city of New York, State of New York, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) HENRY L. JAQUES.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Henry L. Jaques for the conversion of said bank into a national association, and that said Henry L. Jaques at the time of the signing of said authority was and still is the owner of three hundred and eighty-five shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

77 MICHIGAN INSURANCE BANK, DETROIT, *June* 15, 1889.

I, Thurlow Weed, of the city of Albany, State of New York, one of the stockholders of the Michigan Insurance bank, a corporation

created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) THURLOW WEED.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Thurlow Weed for the conversion of said bank into a national association, and that said Thurlow Weed at the time of the signing of said authority was and still is the owner of one hundred and sixty-seven shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

78 MICHIGAN INSURANCE BANK.

I, John Sneden, of *the* Morristown, State of New Jersey, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) JOHN SNEDEN.

Morristown, New Jersey, June 22, 1865.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by John Sneden for the conversion of said bank into a national association, and that said John Sneden at the time of the signing of said authority was and still is the owner of one hundred shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

79 MICHIGAN INSURANCE BANK, DETROIT, *June* 26, 1865.

I, John Owen, of the city of Detroit, State of Michigan, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do

hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) J. OWEN.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by John Owen for the conversion of said bank into a national association, and that said John Owen at the time of the signing of said authority was and still is the owner of four hundred and one shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

80 MICHIGAN INSURANCE BANK, DETROIT, *June* 13, 1865.

I, Edwin W. Giddings, of the county of Macomb, State of Michigan, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) E. W. GIDDINGS.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Edwin W. Giddings for the conversion of said bank into a national association, and that said Edwin W. Giddings at the time of the signing of said authority was and still is the owner of thirty-three shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

81 MICHIGAN INSURANCE BANK, DETROIT, *June* 15, 1865.

I, John Roberts, of the city of Detroit, State of Michigan, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided

by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) JOHN ROBERTS.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by John Roberts for the conversion of said bank into a national association, and that said John Roberts at the time of the signing of said authority was and still is the owner of one hundred and twenty-seven shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

82 MICHIGAN INSURANCE BANK, DETROIT, *June* 20, 1865.

I, Asa Sprague, of the city of Rochester, State of New York, one of the stockholders of the Michigan Insurance bank, a corporation created by and existing under the laws of the State of Michigan, do hereby authorize a majority of the directors of said bank to prepare articles of association and certificate of organization to change and convert said bank into a national banking association, as provided by act of Congress approved June 3rd, 1864, and to do and perform all acts requisite and necessary to make its organization perfect and complete as a national association, to be known as "The National Insurance Bank of Detroit."

(Signed) ASA SPRAGUE.

I, Walter Ingersoll, cashier of the Michigan Insurance bank, do hereby certify that the above is a true copy of the authority given by Asa Sprague for the conversion of said bank into a national association, and that said Asa Sprague at the time of the signing of said authority was and still is the owner of three hundred and thirty-four shares of the capital stock of said bank.

In witness whereof I have hereunto set my hand and affixed the corporate seal of said bank this 26th day of June, 1865.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

83 DISTRICT OF COLUMBIA, *City and County of Washington,* } *ss:*

Under the provisions of section 884 of the Revised Statutes of the United States I, Edward S. Lacey, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original authority for conversion of "The Michigan Insurance Bank of Detroit," Michigan, and of the whole of such original on file and of record in my office.

In testimony whereof I have hereto subscribed my name and

caused my seal of office to be affixed to these presents, at the Treasury Department, in the city of Washington and District of Columbia, this 21st day of September, A. D. 1889.

[SEAL.] E. S. LACEY,
Comptroller of the Currency.

[Endorsed:] Exhibit C.

84 Thereupon the defendant offered in evidence a certified copy of a certificate of the Comptroller of the Treasury; to the receipt of which certificate in evidence the plaintiff, by its counsel, made the same objections as above; which objections were overruled and the plaintiff duly excepted, and which certificate as certified *were* received in evidence and *are* as follows:

85 1433.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF CURRENCY,
WASHINGTON, *July 13th*, 1865.

Whereas by satisfactory evidence presented to the undersigned it has been made to appear that the National Insurance Bank of Detroit, in the city of Detroit, in the county of Wayne and State of Michigan, has been duly organized under and according to the requirements of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act:

Now, therefore, I, Freeman Clarke, Comptroller of the Currency, do hereby certify that the National Insurance Bank of *Baltimore*, in the city of Detroit, in the county of Wayne and State of Michigan, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof witness my hand and seal of office this 13th day of July, 1865.

(S'g'd) FREEMAN CLARKE,
Comptroller of the Currency.

86 DISTRICT OF COLUMBIA, } ss:
City and County of Washington, }

Under the provisions of section 884 of the Revised Statutes of the United States I, Edward S. Lacey, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original copy of the certificate of authority to commence business of "The National Insurance Bank of Detroit," Michigan, and of the whole of such original on file and of record in my office.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the Treas-

ury Department, in the city of Washington and District of Columbia, this 21st day of September, A. D. 1889.

[SEAL.] E. S. LACEY,
Comptroller of the Currency.

[Endorsed:] Exhibit D.

87 Thereupon the defendant offered in evidence the organization certificate of "The National Insurance Bank of Detroit;" to which offer the plaintiff, by its counsel, made the same objections as above; which objections were overruled and plaintiff duly excepted, and which organization certificate was received in evidence, and was as follows:

88 *Organization Certificate.*

We, the undersigned, the directors of "The Michigan Insurance bank," in the State of Michigan, do hereby declare that the owners of two-thirds of the capital stock of said bank have authorized the directors of said bank to make the necessary organization certificate and to change and convert the said bank into a national association, under the provisions of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, 1864, and by virtue of said authority and in accordance with the provisions and requirements of the forty-fourth section of said act we do hereby make and execute this organization certificate:

First. The name and title of this association shall be "The National Insurance Bank of Detroit."

Second. The said association shall be located and continued in the city of Detroit, county of Wayne, and State of Michigan, where its operations of discount and deposit are to be carried on.

Third. The capital stock of this association shall be two hundred thousand and ten dollars ($200,010), and the same shall be divided into six thousand six hundred and sixty-seven shares of thirty ($30) dollars each, as it is now divided in the said Michigan Insurance bank.

89 Fourth. The name and residence of each of the stockholders of the said Michigan Insurance bank, which is to become a national bank under the provisions of the act of Congress aforesaid, and the number of shares of thirty ($30) dollars each held by each stockholder are as follows:

Name.	Residence.	No. of shares.
Erastus Corning	Albany, N. Y.	1,000
J. V. L. Pruyn	Albany, N. Y.	667
Estate of John L. Schoolcraft	Albany, N. Y.	434
David Hamilton	Albany, N. Y.	234
Benjamin C. Raymond	Albany, N. Y.	50
John C. Y. Paige	Albany, N. Y.	28
Thurlow Weed	Albany, N. Y.	167
Edward Whitehouse	New York, N. Y.	167
Henry L. Jaques	New York, N. Y.	385
George I. Seney	Brooklyn, N. Y.	385
John Sneeden	Brooklyn, N. Y.	100
Asa Sprague	Rochester, N. Y.	334
Samuel H. Salisbury	Canandaigua, N. Y.	100
Dean Richmond	Buffalo, N. Y.	500
Levi B. Taft	Chicago, Ills.	38
John Owen	Detroit, Mich.	401
Caleb Van Husan	Detroit, Mich.	339
John Roberts	Detroit, Mich.	127
S. Caroline Toms	Detroit, Mich.	33
Henry B. Denman	Dowagiac, Mich.	17
Mary Ann Dickinson	Romeo, Mich.	166
Mary A. Dickinson	Romeo, Mich.	46
Elizabeth B. Dickinson	Romeo, Mich.	45
90 Sarah Ann Gillett	Westfield, Mass.	45
Edwin W. Giddings	Romeo, Mich.	33
Walter Ingersoll	Detroit, Mich.	325
William H. Weld	Boston, Mass.	501
Total		6,667

Fifth. This certificate is made in order that the said Michigan Insurance bank and the stockholders thereof may avail themselves of the advantages of the aforesaid act and that the said Michigan Insurance bank may be changed and converted into a national banking association under the name and title of "The National Insurance Bank of Detroit."

In witness whereof we have hereunto set our hands this twenty-sixth day of June, eighteen hundred and sixty-five.

JNO. OWEN.
JOHN ROBERTS.
WALTER INGERSOLL.

{10-ct. stamp. U. S. June 26, '65.}

STATE OF MICHIGAN, } ss:
County of Wayne, }

On this twenty-sixth day of June, A. D. 1865, personally came before me, a notary public, of said county, John Owen, John Roberts, and Walter Ingersoll, directors of "The Michigan Insurance bank," to me well known, who severally acknowledged that they executed the foregoing certificate for the purposes therein mentioned.

Witness my hand and seal of office the day and year aforesaid.

CHAS. C. CADMAN,
Notary Public in and for Wayne County, Michigan.

{ 5-ct. stamp. C. C. C., N. P. June 26, '65. }

[SEAL OF NOTARY.]

91 TREASURY DEPARTMENT, } ss:
Office of the Comptroller of the Currency, }

I certify the foregoing to be a true and complete copy of the original organization certificate of The National Insurance Bank of Detroit, with the acknowledgements thereof, now on file and of record in this office, and of the whole of such originals, and that such originals were so filed and recorded on the twenty-ninth day of June, A. D. 1865.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this 21st day of September, A. D. 1889.

E. S. LACEY,
[SEAL.] *Comptroller of the Currency.*

[Endorsed:] Exhibit C.

92 Thereupon the defendant offered in evidence certificate of liquidation of "The National Insurance Bank of Detroit," certified to by the Comptroller of the Treasury; to the receipt of which certificate the plaintiff, by its counsel, made the same objections as above; which objections were overruled and the plaintiff duly excepted, and which certificate of liquidation as certified to by the Comptroller of the Currency *were* received in evidence and *are* as follows, to wit:

93 National Insurance Bank of Detroit.

DETROIT, MICHIGAN, *March 1st*, 1869.

To the Comptroller of the Currency, Washington, D. C.

SIR: It is hereby certified in pursuance of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3, 1864, that at a meeting of the stockholders of the National Insurance Bank of Detroit, located at Detroit, State of Michigan, — in the State of Michigan, duly notified

and held, pursuant to law and the articles of association of said bank, at the office of said association, at Detroit aforesaid, on the twenty-sixth day of February, 1869, it was voted by the shareholders of said association owning more than two-thirds of its stock that said association go into liquidation and be closed.

In testimony whereof I have, by instruction of the board of directors of said association, hereto subscribed my name and affixed the seal of said association, at Detroit aforesaid, the day and year above written.

[Seal of Bank.]

WALTER INGERSOLL, *Cashier.*

[5 ct. stamp, cancelled. W. I., cas. March 1, '69.]

Notice.

The National Insurance Bank of Detroit, located at Detroit, in the State of Michigan, is closing up its affairs. All note-holders and other creditors of said association are therefore hereby notified to present the notes and other claims against the association for payment.

WALTER INGERSOLL, *Cashier.*

Dated Detroit, March 1st, 1869.

94 DISTRICT OF COLUMBIA, *City and County of Washington,* } *ss:*

Under the provisions of section 884 of the Revised Statutes of the United States, I, Edward S. Lacey, Comptroller of the Currency, do hereby certify that the paper hereto attached is a true and complete copy of the original certificate of liquidation of "The National Insurance Bank of Detroit," Michigan, and of the whole of such original on file and of record in my office.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the Treasury Department, in the city of Washington and District of Columbia, this 21st day of September, A. D. 1889.

E. S. LACEY,
Comptroller of the Currency.

[SEAL.]

[Endorsed:] Exhibit E.

95 Thereupon the defendant rested his case.

PLAINTIFF'S COUNSEL: Before we offer any more proof we desire to make a motion that all of the defendants' evidence be stricken out for the reason, if it be assumed to be correct, it has not made out any case.

COURT: I think on the record as it now stands—on the proof as it now stands—the Michigan Insurance bank became defunct and ceased to exist in 1865, when the national bank was organized.

Which motion the court refused to grant, and the plaintiff duly excepted.

PLAINTIFF'S COUNSEL: I have other evidence to show that the statute of limitations has not run, but I do not care, if your honor is satisfied on this question of law, to take the time of the court to offer evidence on the subject of the statute of limitations, because, if your honor is right upon this ruling, that of itself is fatal to recovery. I would ask, if your honor desires to rule on that question, that we may be excused from offering any further testimony on the statute of limitations.

COURT: If you have to go to the Supreme Court it may be better for you to save the other question, too. Then, if you fail on the one, you might have the benefit of the other. Had you not better put in your evidence on the other question?

PLAINTIFF'S COUNSEL: Would your honor submit it to the jury? If your honor would submit the question to the jury and take the answer of the jury —; but if your honor does not intend to submit it to the jury there would be no gain in offering our proof.

COURT: And take a special verdict on the question of the statute of limitations?

PLAINTIFF'S COUNSEL: Yes, sir.

96 COURT: I do not see that anything would be gained by going on, so gentlemen of the jury——

PLAINTIFF'S COUNSEL: I understand, your honor, that regardless of any testimony that we might offer on the question of showing that the statutes of limitations has not run, under the evidence introduced, you would instruct the jury to bring in a verdict for the defendant?

COURT: Yes. You mean that the court thinks this question alone is fatal to your right to recover, regardless of the other question?

PLAINTIFF'S COUNSEL: The defendant has offered the writ in evidence and the return.

COURT: Even if the right of action was not barred you cannot recover.

PLAINTIFF'S COUNSEL: Your honor will see the importance. The defendant has offered certain evidence to prove the claim is barred by the statutes of limitations. We have evidence to show that the summons was placed in the hands of the marshal before the expiration of ten years, but there is no use in taking the time of the court if, regardless of that testimony, your honor would charge the jury to bring in a verdict for the defendant.

COURT: I think I will.

97 Thereupon the court instructed the jury to return a verdict for the defendant, Anson Eldred, and against the plaintiff, The Michigan Insurance Bank; and the verdict of the jury was thereupon rendered in accordance with the instruction of the court and duly recorded.

Inasmuch as the above matters, testimony, objections, and exceptions do not appear of record, the parties to above cause have caused this bill of exceptions to be prepared, and I, Walter Q. Gresham, the judge before whom said cause was tried, do hereby certify that

the above bill of exceptions contains all the evidence which was introduced or offered upon the trial of the above cause and contains all the objections taken and exceptions taken upon said trial, and because the same do not appear of record and to make the same appear of record I have settled, signed, and sealed the above bill of exceptions.

Milwaukee, Wis., June 24, 1891.

WALTER Q. GRESHAM,
Circuit Judge. [SEAL.]

98 And same day (June 25, 1891) assignment of errors — filed, as follows:

Assignment of Errors.

United States Circuit Court, Eastern District of Wisconsin.

THE MICHIGAN INSURANCE BANK, Plaintiff,
vs.
ANSON ELDRED, Defendant.

At the January term of the circuit court of the United States for the eastern district of Wisconsin, in the year 1891, to wit, on the 25th day of June, A. D. 1891, in said term, before the Honorable Walter Q. Gresham, judge of said court, comes the said The Michigan Insurance Bank, by Finches, Lynde & Miller, its attorneys, and says—

That in giving judgment aforesaid there is manifest error in this, that the judgment aforesaid was given in favor of the defendant, Anson Eldred, when by the law of the land the said judgment should have been given for the plaintiff and against said defendant, and the defendant's plea that the plaintiff was not a corporation at the time of the commencement of the action should have been overruled, and no evidence should have been received denying that the plaintiff was a corporation, because it is provided by section 4199 of the Revised Statutes of Wisconsin that it shall not be necessary to prove on the trial the existence of such corporation unless the defendant, by his answer duly verified, shall have specifically denied that the plaintiff is a corporation, and it appears by the amended answer herein that the denial of the incorporation of the plaintiff was on information and belief,
99 which is not a specific denial to render the question of incorporation one of the issues to be tried in the case; and there is manifest error in the ruling of the judge admitting the testimony showing the alleged incorporation of the company, the Insurance National Bank of Detroit, for the reason that the answer contained no specific denial of incorporation, and for the further reason that if the Michigan Insurance bank did take advantage of the acts of Congress and organize itself into a national banking association, such act was not a dissolution of the State bank, and the State bank continued to exist until it should expire by operation of law or be dissolved by some court of competent jurisdiction. The mere fact of accepting a franchise under an act of Con-

gress did not work a dissolution of the State bank, unless the surrender of the State bank franchise was accepted by the State of Michigan. There is manifest error in this, that the court should not have instructed the jury to return a verdict for the defendant, but should have submitted the issues of fact in the case to a jury and taken its findings thereon, and heard further evidence which would have been offered by the plaintiff to show that the statutes of limitations had not run at the time of the commencement of the action, but that the writ in the case at bar had been placed in the hands of the marshal before the expiration of the period of limitation provided by law.

And the said The Michigan Insurance bank prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it hath lost by the occasion of the said judgment.

FINCHES, LYNDE & MILLER,
Attorneys for said The Michigan Insurance Bank, the Plaintiff Aforesaid.

100 UNITED STATES OF AMERICA, *Eastern District of Wisconsin,* } *ss:*

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate with their originals now on file and remaining of record in my office, and that they are true copies of such originals and correct transcripts therefrom, being a transcript of record in the case of The Michigan Insurance Bank *vs.* Anson Eldred.

Seal U. S. Circuit Court, Eastern District Wisconsin.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this 18th day of July, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the 116th.

EDWARD KURTZ, *Clerk.*

101 THE UNITED STATES OF AMERICA, *ss:*

To Anson Eldred, Greeting:

[SEAL.] You are hereby cited and admonished to be and appear at a Supreme Court of the United States, in Washington, on the 24th day of July, A. D. 1891, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Wisconsin, wherein The Michigan Insurance Bank is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable Walter Q. Gresham, circuit judge of the

United States for the seventh judicial circuit, at the city of Milwaukee, in the eastern district of Wisconsin, this 25th day of June, A. D. 1891, and of our Independence the 115th.

WALTER Q. GRESHAM,
Circuit Judge.

We accept service of above citation this 25 day of June, A. D. 1891.

A. L. CARY,
Attorney for Defendant, Anson Eldred.
By F. C. WINKLER.

102 UNITED STATES OF AMERICA, *ss:*

Seal U. S. Circuit Court, Eastern District Wisconsin.

The President of the United States of America to the judges of the circuit court of the United States of America for the eastern district of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the eastern district of Wisconsin, before you, between The Michigan Insurance Bank, plaintiff, and Anson Eldred, defendant, a manifest error hath happened, to the great damage of the said Michigan Insurance Bank, as by the complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 24th day of July next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error that of right and according to law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 25th day of June, in the year of our Lord one thousand eight hundred and ninety-one, and of the Independence of the United States the 115th.

EDWARD KURTZ,
Clerk U. S. Circuit Court for the Eastern District of Wisconsin.

Endorsed on cover: Case No. 14,762. E. Wisconsin C. C. U. S. No. 1288. The Michigan Insurance Bank, plaintiff in error, *vs.* Anson Eldred. Filed July 22, 1891.

United States Circuit Court, Eastern District of Wisconsin.

THE MICHIGAN INSURANCE BANK }
vs.
ANSON ELDRED. }

Now comes the said Michigan Insurance bank, by Miller, Noyes & Miller, its attorneys, and it appearing to my satisfaction, from the stenographer's report of the testimony and trial of the above-entitled cause, that the plaintiff omitted in the bill of exceptions heretofore signed by me and now a part of the record in this case to cause to be correctly represented and preserved what took place upon said trial by omitting two exceptions which were taken upon said trial to the rulings of the court—

It is therefore ordered that said bill of exceptions be, and the same is hereby, amended, so that at the end of the 96th page thereof, after the words "Court: I think I will," the following words should be inserted: "To which ruling the plaintiff duly excepted," and by inserting in the 97th page of said bill of exceptions, after the words "Thereupon the court instructed the jury to return a verdict for the defendant, Anson Eldred, and against the plaintiff, The Michigan Insurance Bank," the words "To which the plaintiff duly excepted."

It is further ordered that the plaintiff cause the original bill of exceptions on file herein to be transcribed, with the above amendments therein inserted, for my signature *nunc pro tunc* as of June 24, 1891, and filed *nunc pro tunc* as of June 25, 1891, said dates being the days when the original bill of exceptions was signed and filed.

The defendant, Anson Eldred, now appears, by his counsel, for the sole purpose of challenging the jurisdiction of the court or the judge thereof to entertain the plaintiff's motion herein or to enter this or any other order touching or affecting the defendant's rights herein, and the defendant now here excepts to this order and to the contemplated action of the court or the judge thereof in signing an amended or additional bill of exceptions herein.

Jan'y 16, 1892.

WALTER Q. GRESHAM,
Circuit Judge.

(Endorsed:) Filed January 16, 1892. Edw. Kurtz, clerk.

Amended Bill of Exceptions.

(Here follows bill of exceptions as it appears in the printed record in this cause, beginning on page 13 and extending to side page 96, on page 50 of said printed record, which matter is omitted here in printing in accordance with the following stipulation:)

In Supreme Court of the United States.

THE MICHIGAN INSURANCE BANK, Plaintiff in Error,
vs.
ANSON ELDRED, Defendant in Error.

No. 1288.
Oct. Term, 1891.

For the purpose of saving expense in printing, it is hereby stipulated that the proposed bill of exceptions herein, signed by the Honorable Walter Q. Gresham, circuit judge, January 18th, 1892, includes the identical matter contained in the bill of exceptions now of record herein, from side page 23 to the end of side page 95, and that such matter need not be reprinted under the order of the court made herein of this date.

Dated January 27th, 1892.

GEORGE P. MILLER,
Attorney for Plaintiff in Error.
ALFRED L. CARY &
F. C. WINKLER,
Attorneys for Defendant in Error.

[Endorsed:] Case No. —. Supreme Court U. S. October term, 1891. Term No., 1288. The Michigan Insurance Bank, plaintiff in error, *vs.* Anson Eldred. Stipulation as to printing amended bill of exceptions. Filed Jan. 27, 1892.

* * * * * * *

96 COURT: I do not see that anything would be gained by going on, so gentlemen of the jury——

PLAINTIFF'S COUNSEL: I understand, your honor, that regardless of any testimony that we might offer on the question of showing that the statutes of limitations has not run, under the evidence introduced, you would instruct the jury to bring in a verdict for the defendant?

COURT: Yes. You mean that the court thinks this question alone is fatal to your right to recover, regardless of the other question?

PLAINTIFF'S COUNSEL: The defendant has offered the writ in evidence and the return.

COURT: Even if the right of action was not barred you cannot recover.

PLAINTIFF'S COUNSEL: Your honor will see the importance. The defendant has offered certain evidence to prove the claim is barred by the statutes of limitations. We have evidence to show that the summons was placed in the hands of the marshal before the expiration of ten years, but there is no use in taking the time of the court if, regardless of that testimony, your honor would charge the jury to bring in a verdict for the defendant.

COURT: I think I will. To which ruling the plaintiff duly excepted.

97 Thereupon the court instructed the jury to return a verdict for the defendant, Anson Eldred, and against the plain-

tiff, The Michigan Insurance Bank, to which the plaintiff duly excepted; and the verdict of the jury was thereupon rendered in accordance with the instruction of the court and duly recorded.

Inasmuch as the above matters, testimony, objections, and exceptions do not appear of record, the parties to above cause have caused this bill of exceptions to be prepared, and I, Walter Q. Gresham, the judge before whom said cause was tried, do hereby certify that the above bill of exceptions contains all the evidence which was introduced or offered upon the trial of the above cause and contains all the objections taken and exceptions taken upon said trial, and because the same do not appear of record and to make the same appear of record I have settled, signed, and sealed the above bill of exceptions.

This amended bill of exceptions is signed *nunc pro tunc* as of June 24, 1891, in pursuance of the findings and order entered herein on the sixteenth day of January, 1892, and it is different from the original bill of exceptions only in the particulars mentioned in that order.

January 18, 1892.

WALTER Q. GRESHAM,
Circuit Judge.

Endorsed as follows: Filed *nunc pro tunc* as of June 25, 1891. Edw. Kurtz, clerk.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, } *ss:*

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate with their originals now on file and remaining of record in my office, and that they are true copies of such originals and correct transcripts therefrom, being copies of the order allowing amendments to the bill of exceptions, and also the amended bill of exceptions in the case of The Michigan Insurance Bank *vs.* Anson Eldred.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee, in said district, this 21st day of January, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the 116th.

Seal U. S. Circuit Court, Eastern District Wisconsin.

EDWARD KURTZ, *Clerk.*

[Endorsed:] Supreme Court U. S. 1891, October term. No. 1288. The Michigan Insurance Bank *vs.* Anson Eldred. Certified copy of amended bill of exceptions. Filed Jan. 27, 1892.

Office Supreme Court U. S.
FILED,
DEC 18 1891
JAMES H. McKENNEY,
CLERK

PLAINTIFF'S BRIEF. CASE No. 14762.

SUPREME COURT OF THE UNITED STATES,

October Term, 1891.

TERM No. 1288.

THE MICHIGAN INSURANCE BANK,
PLAINTIFF IN ERROR,

vs.

ANSON ELDRED,
DEFENDANT IN ERROR.

MILLER, NOYES & MILLER,
Attorneys for Plaintiff.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

Term No. 1288.

THE MICHIGAN INSURANCE BANK, PLAINTIFF IN ERROR.

vs.

ANSON ELDRED, DEFENDANT IN ERROR.

STATEMENT OF FACTS.

The case comes here on writ of error from the United States Circuit Court for the Eastern District of Wisconsin. The plaintiff in error here, who was plaintiff below, brings suit against the defendant upon a judgment recovered on May 13th, 1862, in the Circuit Court of Wayne County, Michigan, against Anson Eldred for $4211.56, (fols. 3–5). The original answer (fol. 5,) was a general denial and a plea of the ten years statute of limitations. A trial was had upon these pleadings, resulting in a judgment by direction in favor of the defendant on the defense of the statute of limitations.

This judgment was reversed, (130 U. S. 693) this Court deciding that it was a question of fact for the jury whether or not the plea of the statute of limitations was sustained.

Upon the return of the record the trial court permitted the defendant to amend its original answer by adding an additional plea, in the following words, to wit: (fol. 17)

> "Said defendant *denies, upon information and belief*, that at the time of the commencement of this action the said plaintiff was or is now a corporation created or organized under

the laws of the State of Michigan, or under the laws of any other state, territory or government; and *said defendant further specifically denies, upon information and belief,* that said plaintiff, at the time of the commencement of this action, was, or at any time since then has been, or is now, a corporation."

TRIAL.

Upon the trial, the plaintiff offered in evidence a certified copy of its articles of incorporation (fols. 24–32). By these articles it appears that the plaintiff was legally and properly organized as a Michigan banking corporation on May 26th, 1860.

Thereupon the plaintiff offered in evidence a certified copy of a judgment and record (fols. 33–54), by which it appeared that in the Circuit Court for Wayne County, Michigan, the plaintiff recovered judgment on May 13th, 1862, against Anson Eldred, for $4211.56. Thereupon the plaintiff rested.

The defendant first offered in evidence the summons in this action, showing that it was issued on May 11th, 1872, but served on June 3rd, 1872 (fol. 56).

Thereupon the court, notwithstanding plaintiff's objection and exception, admitted in evidence a certified copy of the articles of association of the National Insurance Bank of Detroit. These articles of association were (fols. 60–63) executed June 16th, 1865, by the directors of the Michigan Insurance Bank "having been authorized by the owners of two-thirds of the capital stock of said bank to change and convert the said bank into a national banking association, under and according to the provisions of the act of Congress, approved June 3rd, 1864." The articles contain the necessary averments to bring them within the provisions of an act of Congress, entitled, "An Act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864. (c. 106, sec. 44, vol. 13, Stat. at Large p. 112.)

Paragraph 44 of said act provides as follows:

> "Any bank incorporated by special law, or any banking institution organized under the general law of any state, may become a national association under this title by the name prescribed in its organization certificate, and in such case, the articles of association and the organization certificate may be executed by a majority of the directors of the bank or banking institution."

Thereupon the court, notwithstanding the plaintiff's objection and exception, admitted in evidence certified copies of the

original authorities for conversion of the Michigan Insurance Bank of Detroit into a national banking association, all certified by the cashier of the bank on June 26th, 1865 (fols. 63–83). They consist of acknowledgements by the owners of more than two-thirds of the stock of the Michigan Insurance Bank, authorizing the directors to convert the bank into a national banking association. There were 6,667 shares of stock in the state bank, of which more than two-thirds consented to the conversion. *It does not appear from these certificates, or anywhere else, that the stockholders owning the 1286 shares consented to the conversion.*

Thereupon the court admitted in evidence against the defendant's objection and exception, a certified copy of the original organization certificate of the National Insurance Bank of Detroit, dated June 26th, 1865. These appear in folios 88–91, and are an acknowledgement and declaration by the directors of the Michigan Insurance Bank that the owners of two-thirds of the capital stock have authorized the directors to make the necessary organization certificate and to change and convert the said bank into a national banking association.

Thereupon the court admitted in evidence against the plaintiff's objection and exception, a certified copy of notification of liquidation of the National Insurance Bank of Detroit (fols. 93–94). By this it appears that the shareholders of two-thirds of the stock of said association, on the 26th day of February, 1869, voted that said association go into liquidation.

Thereupon the defendant rested his case. The court directed a verdict in favor of the defendant.

ASSIGNMENT OF ERRORS.

1. The conversion of a state bank into a national banking association under an act of Congress, did not cause the dissolution of the state bank organized and existing under the laws of a state.

2. There was no issue under the pleadings as to the corporate existence of the plaintiff.

ARGUMENT.

1. *This action has not abated by lapse of time.*

It appears by the articles of association of the Michigan Insurance Bank as follows: (fol. 28.) "The period at which this

association shall commence shall be on the first day of *June, 1860.* The period at which this association shall terminate shall be on the first day of *June, 1890.*"

This limitation was evidently made because of section ten, of article XV, of the Constitution of Michigan, which provides: "No corporation, except for municipal purposes or for the construction of railroads, plank-roads and canals, shall be created for a longer time than thirty years."

The case was tried in the court below on *June 24th, 1891,* (fol. 23). The defendant moved for a nonsuit below (fol. 37), claiming that the suit abated upon the expiration of its charter June 1st, 1890.

The statutes of Michigan and the decisions thereon settle that a pending suit does not abate under these circumstances. § 4867, section 8, volume 1 Howell's Annotated Statutes, page 1244, which is the same as paragraph 3435 of compiled laws, provides:

> "All corporations whose charter shall expire by their own limitation, or shall be null by forfeiture or otherwise, shall nevertheless continue to be bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which such corporations have been, or may be established."

Bewick vs. Alpena Harbor Co., 39 Mich. 700, and cases there cited, fully establish that the plaintiff corporation did not abate on June 1st, 1890.

2. *The first assignment of error. The conversion of a state bank into a national banking association, pursuant to an act of Congress, does not cause the dissolution of the state bank which has been organized under the laws of a state.*

It appears that in 1862 the Michigan Insurance Bank, a state bank, recovered a personal judgment against Anson Eldred alone, upon a joint and several liability of himself and others, and that from then until 1872 the debt which was finally held to have been merged in that judgment, was in litigation.

Michigan Bank *vs.* Eldred, 9 Wallace 544 (1869).
Eldred *vs.* Bank, 17 Wallace 545 (1872).

This litigation upon the original note was prosecuted in this court from 1868 to 1872 as well as in the court below, in the name of the state bank, although the state bank was converted in 1865 into a national banking association.

After ten years' litigation with Mr. Eldred, this court held in Eldred vs. Bank, 17 Wallace 545, that he was not liable on the original note, because the same was merged in a judgment. The bank anticipating that ruling, as the same question had already been passed upon by this court in Mason vs. Eldred, 6 Wallace 231, caused, in May 1872, a suit to be commenced against Mr. Eldred on that judgment. The question here for review arises in that case because the learned Circuit Judge directed a verdict in favor of the defendant because the suit upon the judgment was commenced in the name of the state bank and should have been brought in the name of the national banking association.

It will be observed that the question arises on the issue formed by the amended answer, which denies the incorporation of the plaintiff. The issue was whether or not the plaintiff was a corporation. The court ruled that by the conversion of the state bank into a national banking association pursuant to an act of Congress, the state bank ceased to exist.

We do not controvert what has been decided by this and other courts:

That the question of whether a national bank was properly organized must be decided by the banking law, even though it was organized by the conversion of a state bank. The consent of the state is not necessary to show the valid organization of a national bank under these circumstances.

Casey *vs.* Galli, 94 U. S. 673.

That the national bank upon such transformation, can enforce in its own name all the contracts of the state bank without the necessity of a written assignment.

City Bank *vs.* Phelps, 86 N. Y. 484, and cases cited in 2 Morse on Banking, 1277.

Watriss *vs.* Bank, 124 Mass. 571.

The issue is not whether the plaintiff is the real party in interest, but whether the national banking association committed such an error when it commenced the suit in the name of the state bank, that as a result of such error it must lose its entire claim.

It is very apparent there is no merit in the defendant's position. What difference does it make to the defendant whether a

suit against him is prosecuted in the name of the state bank, in whose name the judgment was recovered, or in the name of its *successor*, the national bank? It is in fact the same legal entity. There is such a transformation of one into another that without the necessity of a formal assignment, the national bank can enforce all the obligations of the state bank. A guarantor was even held bound to a national bank upon a continuing guaranty running to a state bank, for a claim arising after the transformation.

City Bank *vs.* Phelps, 86 N. Y. 484.
City Bank *vs.* Phelps, 97 N. Y. 44.
People *vs.* Backus, 117 N. Y. 203.

And the reason given was that it was a "continuance of the same body under a changed jurisdiction; that between it and those who had contracted with it, it retained its identity, and might, as a national bank enforce contracts made with it as a state bank."

City Bank *vs.* Phelps, 117 N. Y. 203.

> "A bank established under state laws, and reorganizing under the act of Congress as a national banking association, does not thereby lose any of the assets or escape any of the liabilities appertaining to it in its former character. It is not divested of its identity by a change which is a 'transition and not a new creation.'"
>
> 2 Morse on Banking, § 144, p. 1275. (3d ed. Parsons.)

The statutes of Wisconsin provide: "Section 2605. Every action shall be prosecuted by the real party in interest * * *"

Such objection, however, is waived if not taken by demurrer or answer, even if evidence showing the defect is admitted without objection.

Robbins *vs.* Deverill, 20 Wis. 142.
Jones *vs.* Foster, 67 Wis. 296.

The answer in this case is *not* that the plaintiff is not the real party in interest, but that the plaintiff is not a corporation.

The only question is then: *Does the state bank forfeit its corporate franchise by the acceptance of a corporate franchise from the national government?* We think not.

A corporation can voluntarily surrender its franchise, but becomes thereby dissolved *only upon an acceptance of the surrender by the state*, which granted its charter.

Boston Mfg. Co. *vs.* Langdon, 24 Pick. 49;
Wilson *vs.* Prop'rs Cent. Bridge, 9 R. I. 590;
La Grange Co. *vs.* Rainey, 7 Coldwell 420;
Norris *vs.* Smithville, 1 Swan 164;
Mechanics Bank *vs.* Heard, 37 Ga. 401;
Portland Co. *vs.* Portland Co., 12 B Monroe 77;
Enfield Co. *vs.* Conn Co., 7 Conn. 29,45; and many other cases cited in the text books.

There are a few decisions which held that it is not necessary that there should be an acceptance by the state of a voluntary dissolution of a purely private corporation, but a late author, upon reviewing the authorities on the subject, says:

"The better opinion is that the resolution of the stockholders to dissolve will effect a dissolution only after the legislature has accepted it * * *"

Cook on Stock and Stockholders, § 630, p. 699, (2nd ed.)

The plaintiff being a Michigan corporation the decisions of that state are controlling. The question is whether under the laws of Michigan the plaintiff has ceased to exist as a corporation. It has been held in Michigan that a corporation cannot voluntarily dissolve, and that a surrender of its franchise and assignment of all its property, do not effect its dissolution unless it is accepted by the state.

Town *vs.* Bank of River Raisin, 2 Douglas (Mich.) 530.

Judge Whipple in this case says:

"No rule is better settled than that a corporation may be dissolved, by the surrender of its franchise of being a corporation into the hands of the government; if accepted by the government, the dissolution becomes effectual. The modes in which a surrender is to be made, and as to what facts constitute a surrender, have been a fruitful subject of discussion in the courts of this country. In England, the surrender is by deed to the king, by whom corporations are usually created by charter. In this country, corporations are created by an act of the legislature, and it would seem to follow, in the absence of any statute prescribing the mode in which a surrender is to be made, that to become available, it must be accepted by the authority which created the corporation. I have no doubt that a surrender made by the great body of the society, and accepted by the legislature, would operate as a dissolution of the corporation; but such a surrender and acceptance would not, perhaps, in this country, absolve the corporation

from any of its liabilities, contracts being protected by the constitution of the United States.

"Regarding an act of incorporation, when accepted, as a contract between the state and the corporation, it would, then appear necessary, in order to dissolve a corporation, that the consent of both parties should be obtained. If, therefore, the members of a corporation are desirous of bringing its business to a close, a resolution to surrender by the great body of the corporators, being presented to the legislature, and assented to by that body in the form of a legislative act, would be effectual to dissolve the corporation. So an act of the legislature repealing the charter, if assented to by the corporation, would operate as a dissolution. That a corporation, by its own act, can dissolve itself, is no where asserted, nor can it be sustained; this must be done by the concurrence of the parties to the compact, or by the solemn judgment of a court of competent jurisdiction."

Many of the states have statutory provisions which permit a voluntary dissolution of corporations by filing certain papers.

2 Beach Priv. Corporations, § 779.

Under such statutes the filing of the prescribed papers alone would work a dissolution. The acceptance of a charter from a foreign sovereignty would not have such a result.

This very question has been often settled upon consolidations of corporations. "As a corporation cannot be created except by the legislature, *so it cannot, without the authority of the legislature, merge its existence in that of another.*"

1 Beach Priv. Corporations, § 333, note 1, and many cases there cited.

So a corporation of one state can become incorporated under the laws of another state without a dissolution of the former corporation.

1 Beach Priv. Corporations, § 335, and cases there cited.

Why under these principles should the acceptance of a charter from the national government by a state corporation be considered a dissolution of the corporation which exists exclusively pursuant to the laws of the state.

Mere non user does not forfeit a corporate franchise.

It does not appear by the record whether the Michigan Insurance Bank continued to do any business, after its transformation, into a national bank, except that we know, it prosecuted a suit

against Mr. Eldred ever since. In any event mere non user, if it should appear, or even the loss of all its property, does not effect the existence of a corporation. They are causes why a court of chancery will decree a forfeiture, but do not of themselves work a forfeiture. Citation of authority on this question would not seem necessary, but we may be allowed to refer to Michigan decisions on the subject:

People *vs.* Bank of Pontiac, 12 Mich. 527;
Grand Rapids Bridge Co. *vs.* Prange, 35 Mich. 403;
Strong *vs.* McCagg, 55 Wis. 624;
Cook on Stockholders, § 630.

3. *The second assignment of error. There was no issue under the pleadings as to the corporate existence of the plaintiff.*

I. THERE COULD BE NO ISSUE IN THIS CASE AS TO THE CORPORATE EXISTENCE OF THE PLAINTIFF.

It is well settled by the authorities collated in a former decision of this case (130 U. S. page 695, 696) that, before the Act of Congress of June 1st, 1872, C. 255, par. 5, 17 Statutes 197, (R. S., par. 914),

> "The form of mesne process and the forms and modes of proceedings in actions at law in the courts of the United States in Wisconsin were such as were used in the original court of highest jurisdiction in the state at the time of its admission into the Union in 1848."

That the common law governed the practice and procedure in the highest courts of original or general jurisdiction in Wisconsin, on May 29th, 1848, seems hardly to require citation of authority. Pursuant to the Enabling Act,* approved August 6th, 1846, the people of Wisconsin adopted a Constitution, which was ratified by an Act of Congress,† approved May 29, 1848, which also admitted Wisconsin into the Union. The Constitution‡ of the State of Wisconsin makes Circuit Courts the highest courts of original and general jurisdiction within the State.

* 9 U. S. Statutes at Large, page 57.

† 9 U. S. Statutes at Large, page 234.

‡ The Constitution of the State of Wisconsin is printed with the Revised Statutes of 1878, as well as in previous compilations.

The Constitution of Wisconsin, Article VII, par. 8, provides:

"The Circuit Courts shall have original jurisdiction in all matters, criminal and civil, within this state * *. They shall also have powers to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and all other writs necessary to carry into effect their orders, judgments and decrees * *."

The Constitution also contains the following provision:

"Article XIV, Section 2: All laws now in force in the Territory of Wisconsin which are not repugnant to this constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature.

"Section 13. Such parts of the common law as are now in force in the Territory of Wisconsin not inconsistent with this constitution shall continue a part of the law of this state until altered or suspended by the legislature."

The laws of the Territory of Wisconsin are compiled in the Revised Statutes of 1839. These show that the common law practice and procedure were in force at the time of the adoption of the constitution and were continued by the terms of the constitution itself.

In re. Kindling, 39 Wis. 58, Ryan, C. J., says:

"The constitution vests the judicial power of the state in courts which it establishes or authorizes to be established, to be held by judges whose offices it creates or authorizes to be created. This exhausts the judicial power. Atty. Gen. *vs.* McDonald, 3 Wis. 805; Gough *vs.* Dorsey, 27 id. 119. But the courts of record so established are courts proceeding according to the course of the common law. Putnam *vs.* Sweet, 2 Pinney 302; Callanan *vs.* Judd, 23 Wis. 343."

The common law practice and procedure was in force in Wisconsin up to the adoption of the Code in 1856.

Blair *vs.* Carty, 9 Wis. 543,

and also many English statutes. See

Coburn *vs.* Harvey, 18 Wis. 147;
Connecticut Mutual Life Ins. Co. *vs.* Cross, 18 Wis. 109;
Kellogg *vs.* C. & N. W. R. R. Co., 26 Wis. 272;
Brown *vs.* Kayser, 60 Wis. 7;
Spaulding *vs.* C. & N. W. R. R. Co., 30 Wis. 116-119.

This action was commenced on May 11th, 1872 before said Act of Congress of June 1st, 1872, went into effect. Under all the authorities, a cause of action at common law was not

assignable, and the assignee of such chose in action must bring suit in the name of the assignor.

Lacy *vs.* Mandeville, 1 Wheat. 233;
Hayward *vs.* Andrews, 106 U. S. 672, 675;
N. Y. Co. *vs.* Memphis Co., 107 U. S. 205, 214.

Any further citation of authority seems useless.

Should the defendant be right in his contention that the judgment sued on passed, by operation of law, to the Insurance National Bank when the State Bank was converted, under the Act of Congress, into a national banking association, still when this suit was commenced, it was necessary that the suit should be commenced in the name of the Michigan Insurance Bank and not in the name of its successor, because at the time the common law governed the proceedure in the federal courts of Wisconsin. It appears that the pleadings were not interposed in this action until after the Act of Congress of June 1st, 1872, went into effect, so that the pleadings in this action were properly drawn, pursuant to the provisions of the Code. The Act of Congress of June 1st, 1872, of course, could have no retroactive effect and could not cause the abatement of an action which was properly commenced in the name of the original owner of that chose in action.

II. THE PLEA THAT THE PLAINTIFF IS NOT A CORPORATION MUST BE DISREGARDED BECAUSE THAT DEFENSE HAD ALREADY BEEN WAIVED.

The original answer was filed June 11th, 1874 (fol. 5). It contained a general denial, and the plea of the statutes of limitations. Upon these pleadings, trial was had on June 1st, 1875 (fol. 5), and November 10th, 1885 (fol. 7), and a writ of error taken to this court.

Upon a return of the record below the court allowed, on November 12th, 1889 (fol. 16), the defendant to amend his answer by adding thereto a plea denying the incorporation of the plaintiff. The amended answer is set out at length in fols. 16 and 17. This plea in the amended answer must be disregarded, as that defense had been waived. It did not, therefore, constitute an issue in the case.

It was well settled at common law that the fact that a corporation has no authority to sue, must be taken advantage of

by plea in abatement, *or is waived.* It cannot be taken advantage of under a general denial.

Dental Vulcanite Co. *vs.* Weatherbee, 2 Clifford 562;
Conrad *vs.* Atlantic Ins. Co., 1 Peters 450;
U. S. *vs.* Ins. Co., 22 Wallace 101;
R. R. Co. *vs.* Quigley, 21 Howard 214;
Dutcher *vs.* Dutcher, 39 Wis. 661.

The code of Wisconsin provides as follows:

"Section 2649. The defendant may demur to the complaint when it shall appear upon the face thereof, either:

1. That the court has no jurisdiction of the person of the defendant or the subject of the action; or
2. That the plaintiff has not legal capacity to sue; or
3. That there is another action pending between the same parties for the same cause: or
4. That there is a defect of parties plaintiff or defendant; or
5. That several causes of action have been improperly united; or
6. That the complaint does not state facts sufficient to constitute a cause of action; or
7. That the action was not commenced within the time limited by law.

"Section 2653. When any of the matters enumerated in Section 2649 do not appear upon the face of the complaint, the objection may be taken by answer, and the objection that the action was not commenced within the time limited by law, may in any case be taken by answer.

"Section 2654. If no objection be taken either by demurrer or answer, the defendant *shall be deemed to have waived the same*, excepting only the objection to the jurisdiction of the court and the objection that the complaint does not state facts sufficient to constitute a cause of action."

As a result from these provisions of the code, the defendant in law was deemed to have waived the defense that the plaintiff was not a corporation, when he interposed his original answer in 1874. This is not affected by the statute allowing the court to permit parties to amend their pleadings, which is as follows:

"Section 2830. The court may, upon the trial, or at any other stage of the action before or after judgment, in furtherance of justice, and upon such terms as may be just, amend any process, pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect, or by inserting other allegations material to the case, or when the amendment does not change substantially the claim or defense by conforming the pleading or proceeding to the facts proved."

It would seem self evident that the authority given to the court to permit an amendment of a pleading under this section,

would not change the absolute statutory waiver of a plea in abatement which did not affect the merits of the case. It has so been held in Jones *vs.* Foster, 67 Wis. 296.

III. THE AMENDED ANSWER WAS ON INFORMATION AND BELIEF, AND THEREFORE NOT SUFFICIENT TO RAISE THE DEFENSE THAT THE PLAINTIFF WAS NOT A CORPORATION.

The plea as contained in the amended answer is as follows: (fol. 17.)

> "And for a third and further defense said defendant denies *upon information and belief*, that at the time of the commencement of this action the said plaintiff was, or is now, a corporation created or organized under the laws of the State of Michigan, or under the laws of any other state, territory or government.
>
> "And said defendant further *specifically denies upon information and belief*, that said plaintiff, at the time of the commencement of this action was, or at any time since then has been, or is now, a corporation."

The Revised Statutes of Wisconsin provide as follows:

> "Section 4199. In actions by or against any corporation, it shall not be necessary to prove on the trial, the existence of such corporation unless the defendant, by his answer duly verified, shall have specifically denied that the plaintiff or defendant, as the case may be, is a corporation."

The plea in the amended answer does not specifically deny the incorporation of the plaintiff. It simply denies such incorporation on information and belief, and such a denial is not a *specific denial* under all the authorities.

It has been held that "a denial of knowledge or information thereof sufficient to form a belief, falls far short of such a denial. Hence the answer raises no issue in that behalf."

Crane *vs.* Morse, 49 Wis. 370.

So held also in the following cases:

Concordia Savings *vs.* Read, 93 N. Y. 477;
First National Bank *vs.* Loyhed, 28 Minn. 396;
Steamship Co. *vs.* Rodgers, 21 S. C. 27.

So also as to a denial "upon information and belief."

Taendsticksfabriks *vs.* Myers, 58 Hun. 161;
Bengston *vs.* Thingvalla Co., 31 Hun. 96.

4. *The fact of the liquidation of the National Insuranee Bank does not affect this case.*

The court received in evidence over the plaintiff's objection a certified copy (fols. 92-94) of a notice signed by the cashier of the National Insurance Bank, that the shareholders of said bank had voted that said association go into liquidation, and also a notice that said National Insurance Bank was closing up its business; both dated March 1st, 1869.

It has been held by this court that a voluntary liquidation of a national bank does not thereby dissolve it as a corporation, but that said bank may sue and be sued thereafter.

National Bank *vs.* Ins. Co., 104 U. S. 54.

An act entitled "An Act to enable national banking associations to extend their corporate existence, and for other purposes," passed July 12th, 1882, chapter 290, section 7, provides for the extension of the franchise of the national banking associations for the purposes of liquidation.

Under this decision, and statute, the Insurance National Bank, although it entered into liquidation in 1869, is still in existence for the purposes of liquidation and the collection of its valid claims.

5. *The question of the statute of limitations does not arise upon this hearing.*

The bill of exceptions shows that the defendant offered in evidence the summons in this action and the return of the marshal. By this it appears (fol. 56) that the summons was issued May 11th, 1872, but not served until June 3rd, 1872. So the burden of proof would then be cast upon the plaintiff to show that the summons was placed in the hands of the marshal on or before May 13th, 1872, or else the plea of the ten years statute of limitations would be proved.

Michigan Insurance Bank *vs.* Eldred, 130 U. S. 693.

The bill of exceptions shows that after the court had admitted evidence showing the reoganization of the state bank into a national banking association against the plaintiff's objections

and exceptions, the plaintiff's counsel moved to strike out all of this evidence for the reason, if it be assumed to be correct, it had not made out any case. Which motion the court denied, and thereupon the following proceedings were had as preserved in the bill of exceptions (fols. 95–97.)

"PLAINTIFF'S COUNSEL: I have other evidence to show that the statute of limitations has not run, but I do not care if your honor is satisfied on this question of law, to take the time of the court to offer evidence on the subject of the statute of limitations, because, if your honor is right upon this ruling, that of itself is fatal to recovery. I would ask, if your honor desires to rule on that question, that we may be excused from offering any further testimony on the statute of limitations.

"COURT: If you have to go to the Supreme Court it may be better for you to save the other question, too. Then, if you fail on the one, you might have the benefit of the other. Had you not better put in your evidence on the other question?

"PLAINTIFF'S COUNSEL: Would your honor submit it to the jury? If your honor would submit the question to the jury and take the answer of the jury—; but if your honor does not intend to submit it to the jury there would be no gain in offering our proof.

"COURT: And take a special verdict on the question of the statute of limitations?

"PLAINTIFF'S COUNSEL; Yes, sir.

"COURT: I do not see that anything would be gained by going on, so gentlemen of the jury—

"PLAINTIFF'S COUNSEL: I understand, your honor, that regardless of any testimony that we might offer on the question of showing that the statutes of limitations has not run, under the evidence introduced, you would instruct the jury to bring in a verdict for the defendant?

"COURT: Yes. You mean that the court thinks this question alone is fatal to your right to recover, regardless of the other question?

"PLAINTIFF'S COUNSEL: The defendant has offered the writ in evidence and the return.

"COURT: Even if the right of action was not barred you cannot recover.

"PLAINTIFF'S COUNSEL: Your honor will see the importance. The defendant has offered certain evidence to prove the claim is barred by the statutes of limitations. We have evidence to show that the summons was placed in the hands of the marshal before the expiration of ten years, but there is no use in taking the time of the court if, regardless of that testimony, your honor would charge the jury to bring in a verdict for the defendant.

"COURT: I think I will."

Thereupon the court instructed the jury to return a verdict for the defendant, Anson Eldred, and against the plaintiff, the Michigan Insurance Bank.

The judgment should be reversed for the errors assigned.

Respectfully submitted,

GEORGE P. MILLER,

Dec. 1st, 1891. *Of Counsel for Plaintiff in Error.*

Office Supreme Court U. S.
FILED.
JAN 28 1892
JAMES H. McKENNEY

IN THE

Supreme Court of the United States.

Case No. 1288.

THE MICHIGAN INSURANCE BANK, PLAINTIFF IN ERROR,

vs.

ANSON ELDRED, DEFENDANT IN ERROR.

REPLY TO DEFENDANT'S BRIEF.

The Statutes of Wisconsin make the Plea of the Statutes of Limitation a Defense to be Established by the Defendant.

Sec. 4206 (R. S. of Wisconsin, 1878): "Civil actions can only be commenced within the periods prescribed in this chapter. * * * But the objection that the action was not commenced within the time limited can only be taken by *answer*."

An "*answer*" has been held to include a demurrer.

Howell *vs.* Howell, 15 Wis., 55.

Section 2649 provides: "The defendant may demur to the complaint when it shall appear upon the face thereof:"

"7. That the action was not commenced within the time limited by law."

No reference can be made to the record to ascertain when the action was commenced, because, unless it appears upon the *face* of the complaint, it cannot be taken by demurrer.

Zaezel *vs.* Custer, 51 Wis., 31.
Smith *vs.* Janesville, 52 Wis., 680.

It also seems to be settled that the burden of proof of showing exemption from the operation of the statute rests upon the defendant.

Wright *vs.* Ward, 65 Cal., 525.
Cameron *vs.* San Francisco., 68 Cal., 390.
Wise *vs.* Williams, 72 Cal., 544.
Campbell *vs.* Laclede, 84 Mo., 352.
Combs *vs.* Smith, 78 Mo., 32.
Lewis *vs.* Mason, 84 Mo., 731.
Paine *vs.* Comstock, 57 Wis., 164.

The Statute of Limitations of Wisconsin does not simply bar the remedy but extinguishes the debt.

Brown *vs.* Parker, 28 Wis., 21.

GEORGE P. MILLER,
Attorney for Plaintiff in Error.

FILED
JAN 14 1892
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1891.

Term No. 1288.

THE MICHIGAN INSURANCE BANK,

Plaintiff in Error,

vs.

ANSON ELDRED.

In error to the Circuit Court of the United States for the Eastern District of Wisconsin.

DEFENDANT'S BRIEF.

ALFRED L. CARY,
F. C. WINKLER,
Counsel for Defendant.

"7. That the action was not commenced within the time limited by law."

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Zabel *vs.* Custer, 51 Wis., 31.
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GEORGE P. MILLER,
Attorney for Plaintiff in Error.

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THE MICHIGAN INSURANCE BANK,

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In error to the Circuit Court of the United States for the Eastern District of Wisconsin.

DEFENDANT'S BRIEF.

ALFRED L. CARY,
F. C. WINKLER,
Counsel for Defendant.

Supreme Court of the United States.

October Term, 1891.

Term No. 1288.

THE MICHIGAN INSURANCE BANK,

Plaintiff in Error,

vs.

ANSON ELDRED.

In error to the Circuit Court of the United States for the Eastern District of Wisconsin.

DEFENDANT'S BRIEF.

STATEMENT OF CASE.

This suit was brought upon a judgment recovered in the Circuit Court for Wayne County, Michigan, **May 13, 1862.**

The summons herein bears test May 11, 1872, and was served upon the defendant, Anson Eldred, **June 3, 1872.** (Record folios 2 and 56.)

Complaint in the usual code form upon a judgment record. (Record folios 3 to 5.)

Amended answer; 1st, General Denial; 2d, Ten years' statute of limitations, and 3d, Specific denial that plaintiff is a corporation. (Record folios 16 and 17.)

In June, 1875, a trial was had before the court and a jury resulting in a verdict for the defendant; which, afterwards, on plaintiff's motion, was set aside and a new trial granted. (Record folios 5 and 6.)

In November, 1885, a second trial was had, which resulted in a

verdict and judgment for the defendant; (record folios 7 and 8,) which judgment was afterwards, upon writ of error, reversed by this court and the case was remanded to the Circuit Court for a new trial.

Michigan Insurance Bank vs. Eldred, 130 U. S. 693.

A third trial was had before the court and a jury June 24, 1891, which resulted in a verdict and judgment for the defendant. (Record folios 19 and 20.)

Bill of exceptions on last trial is found in record at folios 23 to 98.

The statement of last trial found on pages 2 and 3 of plaintiff's brief is correct so far as it goes and we will now only make the following addition thereto.

The court upon defendant's offer admitted in evidence against the plaintiff's objection and exception, a certified copy of a certificate made and issued by the Comptroller of the Currency and dated Washington, July 13, 1865, to the effect that whereas by satisfactory evidence presented to him, it had been made to appear that the National Insurance Bank of Detroit, in the city of Detroit, County of Wayne, and state of Michigan, had been duly organized under and according to the requirements of the Act of Congress, entitled, etc., approved June 3, 1864, and had complied with all of the provisions of said act required to be complied with before commencing the business of banking under said act, therefore said bank was authorized to commence the business of banking under the act aforesaid. (Record folio 85.)

I.

ARGUMENT.

It will be observed that the following facts are true:

1. All the evidence offered by either side was admitted.
2. The plaintiff failed to make a **prima facie case.**

3. The court directed the jury to return a verdict for the defendant, to which no exception was taken.

As to the **first** point, the certificate of the Circuit Court shows that "the bill of exceptions contains all the evidence which was introduced or offered upon the trial" as well as "all objections and exceptions taken." Record p. 51. The bill of exceptions is printed in full and begins on page 13 of the record. It will be noticed that the only evidence produced on behalf of the plaintiff was the certificate of incorporation of the Michigan Insurance Bank, dated the 26th day of May 1860, which occupies pages 13, 14, 15, 16 and 17 of the Record, **and** the judgment record which commences at the foot of page 17 and extends to page 31.

The case of course must be judged by the evidence **produced.** Nothing else was **offered** on the part of the plaintiff.. Plaintiff's counsel at the close of the case, when under strict rules he was too late, stated that "**he had** other evidence to show that the statute of limitations had not run" but he asked "to be excused from offering" it. Record p. 50, fol 95. For reasons best known to himself he did not choose to subject it either to the scrutiny of opposing counsel or the judgment of the court.

We say **secondly** that from the beginning to the end of the trial, **the plaintiff never made out a prima facie case.**

The following sections of chapter 138, Revised Statutes of Wisconsin, year 1858, entitled, "**Of the limitation of actions,**" were in force when this action was commenced.

> "Section 1. Civil actions can only be commenced within the periods prescribed in this chapter, except when in special cases a different limitation is prescribed by statute. But the objection that the action was not commenced within the time limited, can only be taken by answer."
>
> * * * * * * * *
>
> "Section 14. The periods prescribed in section one of this chapter for the commencement of actions other than for recovery of real property, shall be as follows:"
>
> * * * * * * * *

This "brings" us to our **third** point. It cannot be questioned that upon the record the plaintiff has no right of recovery against

record of any state or territory within the United States, or of any court of the United States."

* * * * * * * *

"Section 27. An action shall be deemed commenced as to each defendant, when the summons is served on him, or on a co-defendant, who is a joint contractor or otherwise united in interest with him. An attempt to commence an action shall be deemed equivalent to the commencement thereof, **within the meaning of this chapter,** where the summons is delivered with the intent that it shall be actually served, to the sheriff or other proper officer of the county in which the defendants, or one of them, usually or last resided; or if a corporation be defendant, to the sheriff or other proper officer of the county in which said corporation was established by law, or where its general business is transacted, or where it keeps an office for the transaction of business; or if the defendant be a non-resident or a non-resident corporation, to the sheriff or other proper officer of the county in which plaintiff shall bring his action. But such an attempt must be followed by the first publication of the summons, or the service thereof within sixty days."

Section 27 above quoted, was held by this court upon the former writ of error herein (Michigan Insurance Bank v. Eldred, 130 U. S. 693), to be an integral part of the statute of limitations, and as such, applicable to actions in the courts of the United States.

We believe the following proposition laid down by Prof. Greenleaf to be established without conflict in the decisions:

"Where the statute of limitations is set up in bar of a right of action, by the plea of **actio non accrevit infra sex annos,** which is traversed, the burden of proof is on the plaintiff to show both a cause of action, and the suing out of process within the period mentioned in the statute."

2 Greenleaf on Ev. S. 431.
Pond v. Gilson, 5 Allen 19.
Wardwell v. Patrick 1 Bosworth 406.
Huston v. McPherson, 8 Blackf. 562.
Hurst v. Parker, 1 Barw. & Ald. 92.
Wilby v. Henman, 2 Cromp. & Mees. 658.

Pritchard v Bagshaw 5 Eng. Law & Eq 871
Bloomer v Riley 148 Mass. 870

Under the Wisconsin statute the **service** of the process was the **prima facie** time of the commencement of the action.

Sec. 27 Chap. 138 Rev. Stat. of 1858.

The **other time** recognized is delivery to the officer "with the intent that it shall be actually served." **Ibidem.**

One of **these two things** must be shown to have been done in this action within ten years after the rendition of the judgment sued on.

The plaintiff's proofs show a judgment rendered in Michigan May 13, 1862.

The court will take judicial notice of the record and proceedings in the present suit.

Wharton on Evidence §§ 325, 326.

Those proceedings include the marshal's return of the original process.

Had it shown service within the ten years it would have made the plaintiff's **prima facie** case. But it showed service only on the **3d day of June, 1872,** just three weeks after the ten years expired. It was incumbent therefore on the plaintiff to prove the delivery to the marshal with the proper intent within the ten years. He rested without attempting it. On the evidence before the court he had no claim to a recovery against the defendant.

It did not strengthen his case that the defendant read the marshal's return in evidence and gave evidence of plaintiff's abandonment of its charter before the suit was commenced. He offered no evidence either in rebuttal or to strengthen his original case. He stood and he stands here upon the record as he chose to make it.

This brings us to our **third** point. It cannot be questioned that upon the record the plaintiff has no right of recovery against

the defendant. It justified but one ruling, and that was to direct a verdict for the defendant. That was done, and it was so obviously right that the plaintiff did not make it the subject of an exception. He did not and could not ask that the case should be submitted to the jury.

What then has the plaintiff to complain of on this writ of error?

The only exceptions he has is to the admission of certain records which we claim ended the plaintiff's life. **Record** folios 59, 84 and 92.

And again an exception to the refusal to strike out "**all** the defendant's evidence," including the summons and marshal's return. **Record** folio 95.

Suppose these ruling were erroneous. How is it shown that they effect any right of the plaintiff?

We are not in a moot court. Error to justify reversal must appear to have prejudiced the plaintiff in error in a right which the record discloses.

New York etc. R. R. Co. v. Madison, 123 U. S. 524.

No other error can be regarded as material.

The plaintiff cannot say that he is prejudiced in a right of which he has withheld the evidences from the court. There is nothing to show that his evidence, if produced, would not have been utterly insufficient to sustain his contention.

His exceptions are immaterial on this other ground also, that a direction to the jury to find for the defendant was given with plaintiff's consent.

By not **excepting**, he in effect assented.

Holum v. C. M. & St. P. Ry. Co. (Wis.) 50 N. W. Rep. 99.
Kirch v. Davies, 55 Wis. 287.
Nickerson v. Steamship Co., 4 Morr. Trans. 360.
De Lendrecie v. Peck, 48 N. W. Rep. 342.
Street R. R. Co. v. Hart, 114 U. S. 654.
Mutual Life Ins. Co. v. Snyder, 93 U. S. 393.
Barton v. Forsyth, 20 Howard 532.

II.

REPLY TO PLAINTIFF'S ASSIGNMENTS OF ERROR.

We will first consider plaintiff's second assignment of error, viz: **"There was no issue under the pleadings as to the corporate existence of the plaintiff."**

(*a*) The first point made by plaintiff's counsel under this assignment is: **"There could be no issue in this case as to the corporate existence of the plaintiff"** (Plaintiff's brief page 9), and his argument in support of this point briefly stated, as we understand it, is, that prior to June 1, 1872 (that being the date when the practice act adopted by congress went into effect), the common law governed the practice and procedure in the federal courts in Wisconsin; that at common law a cause of action was not assignable, and the assignee of a chose in action must bring suit in the name of the assignor; that this action was commenced on May 11, 1872, and was therefore necessarily brought in the name of the Michigan Insurance Bank, in which name the judgment sued upon was recovered, and could not have been brought in the name of the National Bank into which the state bank had been converted.

Our answer to this argument is two-fold:

1st. That this action was not commenced until the 3d day of June, 1872, the date when the summons was served upon the defendant, at which date the code practice then in force in Wisconsin was the practice in force in the federal courts in said state under the practice Act of Congress of June 1, 1872, which code practice required every action to be prosecuted in the name of the real party in interest; and

2d. That the cause of action did not pass to the National Bank **by assignment,** but by operation of law and under the authority of the Act of Congress which authorized the conversion of state banks into national banking associations, and therefore did not fall under the common law rule above stated.

(*b*) The second point made by plaintiff's counsel under the second assignment of error is that **"The plea that the plaintiff is not a corporation must be disregarded because that defence had already been waived."** (Plaintiff's brief page 11.)

The complaint in this action was filed May 23, 1874, long after the practice act adopted by congress went into effect and conformed to the Wisconsin code (Record folios 3 to 5); all of the pleadings and proceedings herein subsequent to the issuance of the summons have been in compliance with that code.

It is true that defendant's answer was not amended until after there had been two trials of this action and one writ of error therein to this court, but the Wisconsin code is very liberal in allowing amendments to pleadings and proceedings, as will be seen from an examination of section 2830 quoted upon page 12 of plaintiff's brief. Defendant's motion to amend his answer herein was filed October 7, 1889, heard November 11, and allowed November 12, 1889 (Record folios 15 and 16). Such motion was based upon several affidavits (which do not appear in the record) and upon all the papers, records and proceedings then on file herein, and the showing in favor of the motion was deemed sufficient by the Circuit Court and the amendment was allowed. No exception to the order allowing said amendment was taken by the plaintiff (Record folio 16) and hence the correctness of that order is not here for review, even could it be reviewed under the practice of this court.

The "statutory waiver" referred to by plaintiffs counsel must be that mentioned in section 2654 quoted on page 12 of plaintiff's brief, which is, that "if no objection be taken, either by demurrer or answer, the defendant shall be deemed to have waived the same." Plaintiffs non-existence as a corporation has been pleaded in defendant's amended answer, hence the objection has been taken by answer and the requirements of said section 2654 complied with.

The fact that such objection was not taken in the original answer cuts no figure, as it must be presumed that sufficient reasons were presented to the court below for allowing the answer to be amended by pleading the new matter.

In **Jones vs. Foster**, 67 Wis. 296, cited in plaintiff's brief, the matter pleaded in abatement by the amended answer was a defect of parties plaintiffs, which defect appeared upon the face of the complaint and hence might have been raised by demurrer as provided in section 2649, Wisconsin Revised Statutes, quoted on page

12 of plaintiff's brief. The court simply held that as this defect could have been taken advantage of by demurrer, it was not competent to plead it, and furthermore, that the defendants having answered upon the merits without raising the objection as to defect of parties plaintiff, they waived such objection, inasmuch as it appeared upon the face of the complaint. That case therefore has no application to the case at bar, because the matter pleaded here did not appear upon the face of the complaint, on the contrary the complaint alleges that the plaintiff is a corporation, and the defendant raised the issue that it is not at the earliest moment after having obtained information on that subject.

(*c*) The third point raised by plaintiff's counsel under the second assignment of error is, **"The amended answer was on information and belief and therefore not sufficient to raise the defence that the plaintiff was not a corporation."** (Plaintiff's brief page 13.)

The sufficiency of the amended answer depends upon the construction to be given to section 4199, Revised Statutes of Wisconsin, which is as follows:

> "Section 4199. In actions by or against any corporation it shall not be necessary to prove on the trial the existence of such corporation unless the defendant by his answer, duly verified, shall have **specially denied** that the plaintiff or defendant, as the case may be, is a corporation."

The requirement of the statute is that the denial shall be **specific,** and not that it shall be **positive,** hence it may be upon **information and belief**—the denial could not have been more **specific** than as made in the amended answer; it might have been more **positive.**

In **Crane vs. Morse,** 49 Wis. 370, which is the only Wisconsin case giving construction to the statute in question, the form of denial was as follows: **"Defendant has no knowledge or information sufficient to form a belief** concerning the allegations in plaintiff's complaint that the plaintiff herein is a corporation duly organized and existing under and by virtue of the laws of the state of Illinois, and therefore denies the same."

This form of denial was held to be insufficient under the statute.

There is an essential difference between the form of denial in the **Crane** case and that in the case at bar. In the **Crane** case the defendant had **no knowledge or information sufficient to form a belief** as to the corporate existence of the plaintiff, while in the case at bar the defendant **had information and belief** that the plaintiff was not a corporation.

The New York cases cited by plaintiff's counsel are not applicable because Section 1776 of the Code of Civil Procedure in that state provides that proof of corporate existence need not be given unless the answer is verified "and contains **an affirmative allegation** that the plaintiff or defendant, as the case may be, is not a corporation."

While the effect of the New York and Wisconsin statutes may be the same, yet there is a wide difference as to the form of the answer. One requires a **specific denial** and the other an **affirmative allegation.**

We think the amended answer was clearly sufficient to raise the issue of plaintiff's corporate existence.

We have but one other suggestion to make in this connection, which is this: That the plaintiff voluntarily offered evidence tending to prove its corporate existence and thereby tendered such issue for trial and waived any insufficiencies of the answer as to such issue. (Record folios 23 to 32.)

III.

We will now consider plaintiff's first assignment of error, viz.:

> **"The conversion of a state bank into a national banking association under an act of congress, did not cause the dissolution of the state bank organized and existing under the laws of a state."** (Plaintiff's brief, page 3.)

It is unquestioned that the evidence introduced by defendant in that behalf (record folios 59 to 95) proved conclusively that plaintiff was converted into a national banking association in June, 1865, in pursuance of the act of congress then in force authorizing such conversion (United States Revised Statutes, Section 5154), and that such conversion was complete on the **13th day of July, 1865,** as ap-

pears by the certificate of the Comptroller of the Currency found at folio 85 of record.

The sole question is, did plaintiff cease to exist as a corporation upon such conversion? We claim that it did.

This court has already decided that congress had undoubted authority to authorize the conversion of a state bank into a national bank, and that, without any consent from the state.

We quote from the opinion in Casey v. Gallie 94 U. S. 673, at page 678.

> "**No authority from the state was necessary to enable the bank so to change its organization.** The option to do that was given by the forty-fourth section of the Banking Act of Congress. 13 Stat. 112. The power there conferred was ample and its validity cannot be doubted. **The act is silent as to any assent or permission by the state. It was as competent for congress to authorize the transmutation as to create such institutions originally.**"

We also quote from the opinion in Farmers, etc. Nat. Bank vs. Dearing, 91 U. S. 29, page 33, as follows:

> "The national banks organized under the act are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. Of the degree of the necessity which existed for creating them, congress is the sole judge.
>
> **Being such means, brought into existence for this purpose, and intended to be so employed, the state can exercise no control over them, nor in any wise affect their operation except in so far as Congress may see proper to permit.**"

We here quote the latter part of section 5154 U. S. Revised Statutes providing for the organization of state banks as national banking associations:

> "When the Comptroller of the Currency has given to such association a certificate, under his hand and official seal that the provisions of this Title have been complied with and that it is authorized to commence the business of banking, **the association shall have the same powers and privileges and shall be subject to the same duties, responsibilities and rules in all respects as are prescribed for other associations originally**

organized as national banking associations and shall be held and regarded as such an association."

The logical effect of these decisions and of the Act of Congress would seem to be that upon the conversion of a state bank into a national bank, all of its property, rights, privileges and franchises, including its corporate existence, would pass to and be merged in the national bank. What necessity for and how could the state bank exist after it had been stripped of all its property, rights and franchises? If it could still exist as a state corporation for any purpose, it would still be under the control of the state, which is obnoxious and repugnant to the authority exercised by congress over national banks.

The act of congress certainly does not contemplate the existence of **two** banks after the conversion. Hence the state bank must cease to exist for all purposes.

National Bank v. Colby, 21 Wall. 609.

It has been repeatedly held that the national bank resulting from the conversion of a state bank is vested with all the rights and property of the state bank as well as being charged with all of its liabilities.

City National Bank of Poughkeepsie v. Phelps, 86 N. Y. 484.
City National Bank of Poughkeepsie v. Phelps, 97 N. Y. 44.
Watriss v. National Bank of Cambridge, 124 Mass. 571.
Atlantic National Bank v, Harris, 118 Mass. 147.
Kelsey v. National Bank of Crawford Co., 69 Penn. St. 426.
Coffey v. National Bank of the State of Missouri, 46 Mo. 140.
Thorp v. Wegefarth, 56 Penn. St. 82.

The national banking association is necessarily another corporation from that which existed under the state authority, because it is created by a different sovereign power and is vested with different rights and subject to different laws, rules and regulations.

Plaintiffs counsel on pages 5 and 6 of his brief, says:

"It is very apparent there is no merit in defendant's posi-

tion. What difference does it make to the defendant whether a suit against him is prosecuted in the name of the state bank, in whose name the judgment was recovered, or in the name of its successor, the National Bank?"

We reply that, in our humble opinion, there is a wide difference. Defendant is entitled to have the suit prosecuted by the party that can give him a full and complete acquitance and discharge in case there should be recovery and satisfaction. Such acquitance and discharge could only be given by the National Bank.

For aught that appears herein, it may be that this suit is being prosecuted by a party that is a stranger to and has no connection with the National Insurance Bank of Detroit, and plaintiff's counsel may unwittingly represent such a party. If such should be the case, and there should be a recovery against defendant and he should make satisfaction by payment to plaintiff's counsel, who should pay the money over to such stranger, there would be no valid satisfaction of the claim, and defendant would still be liable to the National Insurance Bank of Detroit.

Plaintiff's conversion into a national bank was completed July 13, 1865, nearly seven years before this action was commenced; and if we are right, plaintiff ceased to exist as a corporation at that time.

It also appears from the record (folio 93) that the National Insurance Bank of Detroit went into liquidation pursuant to a vote of its shareholders, March 1, 1869, and as authorized by sections 5220 and 5221, U. S. Revised Statutes.

It is not a mere difference of **name** in the party plaintiff. The plaintiff which asserts this claim against us alleges and attempts to prove itself "a corporation organized under the laws of the State of Michigan."

A suit by such a party however determined could be no bar to another suit brought by a corporation organized under the laws of the United States.

ALFRED L. CARY,
F. C. WINKLER,
Counsel for Defendant in Error.

MOTION.

In the Supreme Court of the United States.

THE MICHIGAN INSURANCE BANK, *Plaintiff in Error,* *vs.* ANSON ELDRED, *Defendant in Error.*	**No. 1288.** **October Term, 1891.**

YOU WILL PLEASE TAKE NOTICE, that on Monday, the 19th day of October, 1891, or as soon thereafter as counsel can be heard, the plaintiff in error herein will apply to the Supreme Court of the United States at Washington to advance the hearing of the above entitled cause, the same being case docketed No. 1288 of October term, 1891, for the reason that said cause has once been adjudicated by said Supreme Court upon the merits, and may be advanced by leave of Court on motion of either party as provided by Subdivison Four of Rule Twenty-six of the Rules of the Supreme Court of the United States.

Said application will be based upon the affidavit hereto annexed and upon the transcript of record on file in this cause.

B. K. MILLER,
Attorney for Plaintiff in Error.

To MESSRS. F. C. WINKLER and A. L. CARY,
Attorneys for Defendant in Error.

STATEMENT OF FACTS.

In the Supreme Court of the United States.

THE MICHIGAN INSURANCE BANK,
Plaintiff in Error,
vs.
ANSON ELDRED,
Defendant in Error.

STATE OF WISCONSIN.

EASTERN DISTRICT OF WISCONSIN, COUNTY OF MILWAUKEE—ss.

GEORGE P. MILLER, being first duly sworn, deposes and says:

That he is one of the attorneys for the plaintiff in error; that it appears by the record on file herein that on the 11th day of May, 1872, the plaintiff in error filed its *precipe* for a summons in the court below, and, accordingly, on the said 11th day of May, 1872, the summons was duly issued, and, as appears by the return of the Marshal on file herein, said summons was served on June 3d, 1872.

That thereafter issue was duly joined in said action, and thereafter a trial had, upon which, on the 18th day of November, 1885, judgment was entered in favor of the defendant and against the plaintiff, dismissing the plaintiff's complaint.

That thereafter, on January 2d, 1886, said plaintiff in error sued out a writ of error to this Court, and said cause was thereupon removed to this Court and transcript of record duly filed herein on March 26th, 1886.

That thereafter said writ of error came on for hearing in this Court, and this Court adjudicated the case upon its merits and reversed said judgment and remanded the case for a new trial; the decision of this Court having been rendered on May 13th, 1889, and appears reported in Volume 130 of United States Reports, page 693.

That thereafter, a new trial of said cause, as appears by the record on file herein, was had in said Circuit Court, and said cause was again tried upon its merits in said Circuit Court, and resulted in a judgment in favor of the defendant in error and against the plaintiff in error herein, and to reverse said judgment the plaintiff in error herein has prosecuted a writ of error and removed the case to this Court, and the same has been docketed herein, on or about July 23d, 1891, and appears docketed as case No. 1288 of October term, 1891.

That inasmuch as said cause has once been adjudicated by this Court upon the merits, and has been again brought up by writ of error, this deponent is informed and verily believes that said cause should be advanced as provided by Section Four of Rule Twenty-six of the Rules of the Supreme Court.

That he makes this affidavit on behalf of the plaintiff in error.

GEORGE P. MILLER.

Subscribed and sworn to before me this 26th day of September, 1891.

EDWARD KURTZ,

Clerk of U. S. Circuit Court, Eastern District of Wisconsin.

L. S.